

employer or such superior thereof already knows of the defect.

"Second. Where a person of ordinary care would have continued in the service with the knowledge of the defect and danger; and in such case it shall not be necessary that the servant or employe give notice of the defect as provided in subdivision 1 hereof."

Sec. 2. The fact that there is now no adequate law protecting employes on railroads in their employment, from damages in operating defective machinery, creates an emergency and an imperative public necessity, that the constitutional rule which requires bills to be read on three several days in each house be suspended, and said rule is hereby suspended, and this act shall take effect and be in force from and after its passage, and it is so enacted.

And find the same correctly enrolled, and have this day, at 3:40 o'clock p. m., presented the same to the Governor for his approval.

TERRELL, Chairman.

Committee Room,  
Austin, Texas, April 7, 1905.  
Hon. Geo. D. Neal, President of the Senate.

Sir: Your Committee on Enrolled Bills have carefully examined and compared

Senate concurrent resolution No. 8, a resolution to be entitled "An Act, whereas, under the construction given the Wilson act by a majority of the Supreme Court of the United States, intoxicating liquors may be shipped as interstate commerce from one State into another exempt from police powers of the State, until the same arrives at its destination and is delivered to the consignee; and

"Whereas, in many counties and districts in this State, the citizens are in favor of and have adopted local option laws, prohibiting the sale of intoxicating liquors within the limits of counties or districts where the law has been adopted; and

"Whereas, non-residents who contribute nothing to the expenses of policing made necessary by the liquor traffic or by their agents invading local option territory in disregard of public sentiment, and in impudent defiance of good morals and the will of the people, and are soliciting and taking orders for intoxicating liquors to be shipped under such terms as to be protected as interstate commerce under the decisions of the Supreme Court above mentioned,"

And find the same correctly enrolled, and have this day, at 3:40 o'clock p. m., presented the same to the Governor for his approval.

TERRELL, Chairman.

# FIFTY-NINTH DAY.

Senate Chamber,  
Austin, Texas,  
Monday, April 10, 1905.

Senate met pursuant to adjournment, President Pro Tem. Hanger in the chair.

Roll call, quorum present, the following Senators answering to their names:

Barrett.	Hawkins.
Beaty.	Hill.
Brachfield.	Holland.
Chambers.	Looney.
Davidson.	Martin.
Decker.	McKamy.
Faulk.	Meachum.
Faust.	Paulus.
Glasscock.	Skinner.
Grinnan.	Smith.
Hale.	Stafford.
Hanger.	Stokes.
Harbison.	Stone.
Harper.	Willacy.

Absent.

Griggs.	Terrell.
Hicks.	

Prayer by the Chaplain, Rev. H. M. Sears.

Pending the reading of the Journal of Friday, on motion of Senator Decker the same was dispensed with.

(See appendix for standing committee reports.)

Morning call concluded.

## HOUSE CONCURRENT RESOLUTION NO. 26.

Senator Stone called up

House concurrent resolution No. 26, relative to sine die adjournment of the Twenty-ninth Legislature, fixing April 15 as the date of adjournment.

The resolution was read and adopted by the following vote:

Yeas—16.

Beaty.	Faulk.
Chambers.	Faust.
Davidson.	Griggs.
Decker.	Hale.
Hawkins.	Stafford.
Holland.	Stokes.
Martin.	Stone.
Paulus.	Willacy.

Nays—13.

Barrett.	Grinnan.
Brachfield.	Hanger.
Glasscock.	Harbison.

Harper.	McKamy.
Hicks.	Skinner.
Hill.	Smith.
Looney.	

Absent.

Meachum.	Terrell.
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Senator Stone moved to reconsider the vote by which the resolution was adopted, and lay that motion on the table.

Senator Looney moved, as a substitute, that the vote by which the resolution was adopted be reconsidered and spread on the Journal, and

Senator Decker moved to table that motion.

The roll call was started on the motion to table, and

Senator Looney moved a call of the Senate, which motion was duly seconded, and

Senator Stone made the point of order that the roll call had been begun on the motion to table.

The Chair (President Pro Tem. Hanger) overruled the point of order, stating that had the point been made before the call had been moved and seconded, it would have been well taken.

On the call of the Senate the roll was called, the following Senators answering to their names:

Barrett.	Hawkins.
Beaty.	Hicks.
Brachfield.	Hill.
Chambers.	Holland.
Davidson.	Looney.
Decker.	Martin.
Faulk.	McKamy.
Faust.	Meachum.
Glasscock.	Paulus.
Griggs.	Skinner.
Grinnan.	Smith.
Hale.	Stafford.
Hanger.	Stone.
Harbison.	Willacy.
Harper.	

Absent.

Stokes.	Terrell.
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Absent not Excused.

Senators Stokes and Terrell.

#### FIRST HOUSE MESSAGE.

Hall of the House of Representatives,  
Twenty-ninth Legislature,  
Austin, Texas, April 10, 1905.

Hon. George D. Neal, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following bills:

House bill No. 558, a bill to be en-

titled "An Act to amend Section 1, of Chapter 24, of the Acts of the Twenty-seventh Legislature of the State of Texas, being 'An Act to amend Section 1, Chapter 128, of an act passed by the Twenty-sixth Legislature and sent to the Governor for his approval on the 20th day of May, A. D., 1899, and amended by an act passed by the Twenty-eighth Legislature in Chapter 71, page 97, of the General Laws, and entitled 'An Act providing a mode by which horses, mules, jacks, jennets and cattle may be prevented from running at large in the following counties or in any subdivision of said counties, viz.: Cooke, Bell, Ellis, Montague, Fayette, Johnson, Collin, Rockwall, Lamar, Milam, Denton, Falls, Navarro, Fannin, Hunt, Tarrant, Grayson, Guadalupe, Dallas, Austin, Brazos, so as to place Lavaca, Colorado, Washington, Williamson, Smith and Delta counties under the provisions of said chapter,' so as to place McLennan, San Patricio, Lime-stone, Coryell, Kaufman, Rains, Bastrop, Bee, Camp, Caldwell, Calhoun, Cass, Comanche, Erath, Hill, Harrison, Hopkins, Jackson, Bosque, Montgomery, Morris, Upshur, Parker, Rusk, Red River, Titus, Trinity, Victoria, Van Zandt, Wise, Walker, Wood, Wilson, Comal, Nueces, Bexar, Eastland, Cherokee, Travis and Knox counties under the provisions of said chapter,' and to provide for the holding of an election for the purpose of enabling the freeholders of such counties or subdivisions thereof as may have adopted said law to repeal the same."

House bill No. 631, a bill to be entitled "An Act creating the Gause independent school district in Milam county, Texas, defining its boundaries, providing for the election of a board of trustees to manage and control the public free schools within said district with all the powers, rights and duties of independent school districts formed by the incorporation of towns and villages for free school purposes only, and declaring an emergency."

House bill No. 625, a bill to be entitled "An Act to create a more efficient road system for San Saba county, Texas."

House bill No. 612, a bill to be entitled "An Act to create a more efficient road system for Jefferson county, in the State of Texas, and authorizing the county commissioners court of Jefferson county to lay out, build and construct roads, bridges and approaches, the paving of streets and connecting roads with paved streets in the city of Beaumont, and authorizing the creation of road districts and the issuance of bonds for the payment of such improvements, as authorized under the Constitution of the State of Texas and the provisions of this act,

and declaring an emergency," with engrossed rider.

Respectfully,  
BOB BARKER,  
Chief Clerk, House of Representatives.

#### HOUSE BILL NO. 50.

On motion of Senator Davidson, the pending order of business, House bill No. 37, was suspended, and the Senate took up, out of its order, House bill No. 50.

#### REFUSED TO EXCUSE ABSENTEES.

Senator Decker moved to excuse the absentees on the call of the Senate, which motion was lost by the following vote:

##### Yeas—17.

Barrett.	Hawkins.
Beaty.	Holland.
Chambers.	Martin.
Davidson.	Meachum.
Decker.	Paulus.
Faust.	Stafford.
Griggs.	Stone.
Hale.	Willacy.
Hanger.	

##### Nays—12.

Brachfield.	Hicks.
Faulk.	Hill.
Glasscock.	Looney.
Grinnan.	McKamy.
Harbison.	Skinner.
Harper.	Smith.

##### Absent.

Stokes.	Terrell.
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Here the Chair asked an expression of the Senate as to what means the Senate desired the Sergeant-at-Arms to use to have the absent member (Senator Terrell) return on account of the call.

Senator Faulk moved that the Sergeant-at-Arms be instructed to wire Senator Terrell to return.

Senator Chambers moved, as a substitute, that Senator Terrell be excused till tomorrow morning, and that motion was lost by the following vote:

##### Yeas—19.

Barrett.	Hill.
Beaty.	Holland.
Chambers.	Martin.
Davidson.	Meachum.
Decker.	Paulus.
Faust.	Stafford.
Griggs.	Stone.
Hale.	Willacy.
Hanger.	
Hawkins.	

##### Nays—10.

Brachfield.	Hicks.
Faulk.	Looney.
Glasscock.	McKamy.
Grinnan.	Skinner.
Harper.	Smith.

##### Absent.

Terrell.
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##### Absent—Excused.

Harbison.
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The Sergeant-at-Arms was then instructed to telephone or telegraph Senator Terrell and see how soon he could or would return to the Senate, and report same to the Senate.

#### HOUSE BILL NO. 50—PASSAGE OF.

The Chair here laid before the Senate, on third reading,

House bill No. 50, a bill to be entitled "An Act to amend Article 2439, Chapter 1, Title XLV, of the Revised Civil Statutes of the State of Texas of 1895, in reference to fees of office to be charged and collected by certain State officers."

Senator Faulk offered the following amendment:

Amend the bill by adding the following: "Provided, that no permit to do business in this State shall be issued to any foreign corporation in case it fails to pay the fee mentioned in this act."

The amendment was adopted by the following vote:

##### Yeas—26.

Barrett.	Glasscock.
Beaty.	Grinnan.
Brachfield.	Hale.
Chambers.	Hanger.
Davidson.	Harper.
Decker.	Hawkins.
Faulk.	Hicks.
Faust.	Hill.
Holland.	Skinner.
Looney.	Smith.
Martin.	Stokes.
McKamy.	Stone.
Meachum.	Willacy.

##### Present—Not Voting.

Griggs.
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##### Absent.

Harbison.	Stafford.
Paulus.	Terrell.

Senator Decker offered the following amendment:

Amend the bill by adding after amendment by Faulk the following:

"Or if while doing business under any former permit to do business in this State such corporation shall have removed any suit from a State to a Federal court on the grounds of diversity of citizenship of parties."

Senator Davidson made the point of order that the amendment was not germane to the bill, and

The Chair (President Pro Tem. Hanger) sustained the point of order.

Here Senator Faulk moved to reconsider the vote by which his amendment (introduced and adopted this morning) was adopted.

The motion to reconsider was adopted, and

Senator Faulk then withdrew his amendment.

The bill was then read third time and passed by the following vote:

Yeas—27.

Barrett.	Hill.
Brachfield.	Holland.
Chambers.	Looney.
Davidson.	Martin.
Faulk.	McKamy.
Faust.	Meachum.
Glasscock.	Paulus.
Griggs.	Skinner.
Grinnan.	Smith.
Hale.	Stafford.
Hanger.	Stokes.
Harper.	Stone.
Hawkins.	Willacy.
Hicks.	

Nays—1.

Decker.

Absent.

Beaty.

Terrell.

Absent—Excused.

Harbison.

Senator Davidson moved to reconsider the vote by which the bill was passed, and lay that motion on the table.

The motion to table prevailed.

#### HOUSE BILL NO. 399—PASSAGE OF.

Senator Chambers moved that the pending order of business (Senate bill No. 319) be suspended, and that the Senate take up, out of its order, House bill No. 399.

Senator Hale moved as a substitute motion that pending business be suspended and take up House bill No. 37, which motion was lost.

The motion to take up House bill No. 399 was then adopted.

The Chair laid before the Senate, on second reading,

House bill No. 399, a bill to be entitled "An Act requiring railroad companies to construct sidings and spur tracks, and giving to the Railroad Commission power to require the construction of same in certain cases."

On motion of Senator Davidson, the committee report was adopted.

Senator Davidson here offered the following amendment, which was a substitute for the bill:

Amend by substituting for the enacting clause and the bill the following:

A bill to be entitled An Act requiring railroad companies to construct switches and spur tracks; defining when it is an abuse not to connect, and requiring them to connect when ordered to do so by the Railroad Commission; providing the power of condemnation for said purposes, and giving the Railroad Commission power to require the construction of such connecting tracks, spurs and switches.

Be it enacted by the Legislature of the State of Texas:

Section 1. That all railroad companies in Texas be and they are hereby required, under such rules and regulations as may be prescribed by the Railroad Commission of Texas, to construct switches or spur tracks into private industries located on or adjacent to their lines of railway, sufficient and necessary to handle the business of such industries.

Section 2. Where the lines of two or more railroad companies operated in this State, at or near (not exceeding one mile of) a station on either line where freight is received and discharged, cross at grade or otherwise, or are contiguous, or approach so near each other (not exceeding one-half mile) that the public interests, or that of said companies, or either of them, requires an interchange of freight, tonnage and cars, it is hereby declared to be an abuse of the privileges and franchises of such companies for them not to connect said lines at such point so as to make such interchange, provided it can be done at a reasonable cost, and the public interest, or that of said companies, or either of them, requires such interchange.

Section 3. The Railroad Commission shall have the power, and upon application of persons interested it shall be its duty, to inquire and determine when and where such connections are necessary for the proper and economical handling of business offered by the public, and can be made at a cost not unreasonable in view of all the circumstances and interests to be subserved. Should it decide that a connection is so required, and unless



it finds the expense unreasonable, it shall have the power, and it shall be its duty, to require either or all of the railroad companies whose lines so cross, intersect or approach, as set out in Section 2 hereof, to construct a connecting track between their lines for the interchange of freight, tonnage and cars. Whenever the Commission shall order connections, it shall impose such terms and conditions as shall be equitable, and may determine whether the expense of such connection is to be paid by the person or firm, association of persons, or corporation at whose request or for whose benefit such connection is made, or by the railroad company, receiver or assignee ordered by the Railroad Commission of Texas to make such connection; or whether such expense shall be apportioned between said parties.

Section 4. Such private property, or such railroad property as may be necessary, may be condemned (as property is under existing laws condemned by railroad companies) for the construction of such connections, switches and spurs as are provided for in this act.

Section 5. Power is hereby conferred upon the Railroad Commission of Texas to prescribe the necessary rules and regulations to give effect to and to compel compliance with the requirements specified in Sections 1, 2 and 3 of this act.

Section 6. If any railroad company violates any provision of this act, or any rule or regulation of the Railroad Commission made in pursuance thereof, such railroad company so offending shall be subject to the penalties prescribed by law for failure to comply with order of the Railroad Commission.

Section 7. The fact that public business is greatly retarded because of the want of adequate laws requiring railroad connections, and providing for the necessary construction of spurs and switches, creates an emergency and an imperative public necessity authorizing and requiring the suspension of the constitutional rule requiring bills to be read on three several days, and that this bill take effect and be in force from and after its passage, and it is so enacted.

Senator Hicks raised the point of order that the substitute was not germane to the bill, and stated his reasons therefor, and

The Chair (President Pro Tem. Hanger) overruled the point of order, stating that the issue was not clear and he would leave it for the Senate to vote on.

The substitute amendment was then adopted.

Senator Brachfield offered the following amendment to the bill:

Amend by striking out the words "or otherwise," in Section 2, page 1, of the bill.

(Senator McKamy in the chair.)

Senator Hale moved to table the amendment, which was lost by the following vote:

Yeas—9.

Barrett.	Looney.
Davidson.	Martin.
Faulk.	McKamy.
Hale.	Skinner.
Hill.	

Nays—17.

Beaty.	Harper.
Brachfield.	Hawkins.
Chambers.	Hicks.
Decker.	Paulus.
Faust.	Smith.
Glasscock.	Stokes.
Grinnan.	Stone.
Hanger.	Willacy.

Absent.

Griggs.	Stafford.
Holland.	Terrell.
Meachum.	

Absent—Excused.

Harbison.

The amendment was then adopted.

Bill read second time and passed to third reading. On motion of Senator Chambers the constitutional rule requiring bills to be read on three several days was suspended and the bill put on its third reading and final passage by the following vote:

Yeas—25.

Barrett.	Faust.
Beaty.	Glasscock.
Brachfield.	Grinnan.
Chambers.	Hale.
Davidso.	Hanger.
Davidson.	Harper.
Decker.	Hawkins.
Faulk.	Hill.
Holland.	Skinner.
Looney.	Smith.
Martin.	Stafford.
McKamy.	Stokes.
Paulus.	Willacy.

Nays—2.

Hicks.	Stone.
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Absent.

Griggs.	Meachum.
Harbison.	Terrell.

The bill was read third time and passed.

Senator Chambers moved to reconsider the vote by which the bill was passed, and lay that motion on the table.

The motion to table prevailed.

#### SENATE SUBSTITUTE BILL NO. 46—HOUSE AMENDMENTS CONCURRED IN.

Senator Glasscock called up

Senate substitute bill No. 46, a bill to be entitled "An Act to amend Articles 2159, 2164, 2170, 2171, 2174, Title XXXIX, Chapter 25, Revised Civil Statutes."

And moved that the Senate concur in the House amendments, as follows:

Amend by inserting between the word "court" and the words "any one or more," in Article 2171, the following, "and not less than twenty days after such finding, and before any exception thereto is filed, or after such exception is acted upon by the court."

(2)

Amend by inserting between the word "constitutional" and the words "for bills to be read," in the engrossed rider, the word "rule."

The motion to concur prevailed.

(President Pro Tem. Hanger in the chair.)

#### PENDING BUSINESS — ADJOURNMENT RESOLUTION.

Here the Chair announced that Senator Terrell had been communicated with, and reported that he could not come unless compelled to, and

Senator Faulk moved to excuse Senator Terrell for today, which motion was adopted by the following vote:

Yeas—20.

Barrett.	Faust.
Beaty.	Griggs.
Chambers.	Hale.
Davidson.	Hanger.
Decker.	Hawkins.
Faulk.	Hill.
Holland.	Stafford.
Martin.	Stokes.
Meachum.	Stone.
Paulus.	Willacy.

Nays—9.

Brachfield.	Looney.
Glasscock.	McKamy.
Grinnan.	Skinner.
Harper.	Smith.
Hicks.	

Absent.

Harbison. Terrell.

Action then recurred on the House concurrent resolution No. 26—adjournment resolution.

Question being on Senator Decker's motion to table Senator Looney's substitute motion to reconsider the vote by which the resolution was adopted and spread on the Journal.

Senator Harbison had been temporarily excused, and that point was raised, and

Senator Stafford moved to excuse Senator Harbison, which motion was lost by the following vote:

Yeas—18.

Barrett.	Hill.
Beaty.	Holland.
Chambers.	Martin.
Davidson.	Meachum.
Decker.	Paulus.
Faust.	Stafford.
Griggs.	Stokes.
Hale.	Stone.
Hanger.	Willacy.

Nays—11.

Brachfield.	Hicks.
Faulk.	Looney.
Glasscock.	McKamy.
Grinnan.	Skinner.
Harper.	Smith.
Hawkins.	

Absent.

Harbison.

Absent—Excused.

Terrell.

#### SECOND HOUSE MESSAGE.

Hall of the House of Representatives,  
Twenty-ninth Legislature,  
Austin, Texas, April 10, 1905.

Hon. Geo. D. Neal, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following bills:

House bill No. 49, a bill to be entitled "An Act to provide for the appointment of a competent stenographer and Chapter 88, approved April 15, to report cases and to make the report of such stenographer, when filed and approved, the statement of facts of the oral evidence in the case, and to provide for compensation of such stenographer."

House bill No. 533, a bill to be entitled "An Act to provide a method for the assessment and collection of

taxes on real properties omitted from the tax rolls for any year or years since the year 1884, and a method for reassessing and collecting the tax on real properties on which former assessments are found to be invalid or which have been declared invalid by any district court for any reason in any suit to enforce the collection of taxes on said properties."

House concurs in Senate amendments to House bill No. 55 by following vote: yeas 90, nays 1.

Concurs in Senate amendments to House bill No. 499 by the following vote: yeas 91, nays 0.

Respectfully,

BOB BARKER,  
Chief Clerk House of Representatives.

### THIRD HOUSE MESSAGE.

Hall of the House of Representatives,  
Twenty-Ninth Legislature.

Austin, Texas, April 10, 1905.

Hon. Geo. D. Neal, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has granted the request of the Senate for Free Conference Committees on Senate bills Nos. 17 and 301, and appointed the following on part of the House:

Senate bill No. 17: Kennedy, Bartholomew, O'Neal, Onion, Bryan of Harris.

Senate bill No. 301: Love of Dallas, Hancock, Foree, Wilmeth, Guinn.

Respectfully,

BOB BARKER,  
Chief Clerk House of Representatives.

### HOUSE BILL NO. 441.

On motion of Senator Hill, the pending order of business (Senate bill No. 319) was suspended, and the Senate took up, out of its order, House bill No. 441.

The Chair laid before the Senate, on second reading,

House bill No. 441, a bill to be entitled "An Act to provide for the sale and lease of the public free school and asylum lands; and to prevent the free use, occupancy and enclosure of the same; and to repeal Chapters 47 and 48, Acts of 1895, and Chapter 129, Act of 1897, and Sections 5, 6, 7 and 8, Chapter 11, Act of February 23, 1900, 1901, and Chapter 125, Act of April 19, 1901, and all other laws in conflict herewith."

(Senator Faulk in the chair.)

Senator Smith moved that further consideration of the bill be postponed

till tomorrow morning and be made a special order for after the morning call.

(President Pro Tem. Hanger in the chair.)

Pending discussion, the motion was withdrawn.

### HOUSE CONCURRENT RESOLUTION NO. 26.

At this time Senator Harbison appeared at the bar of the Senate and the question then recurred on the motion by Senator Decker to table the substitute motion by Senator Looney to reconsider the vote by which House concurrent resolution No. 26 had been adopted, and spread on the Journal.

The motion to table was adopted by the following vote:

Yeas—16.

Beaty.	Hill.
Chambers.	Holland.
Davidson.	Martin.
Decker.	Meachum.
Faust.	Paulus.
Griggs.	Stafford.
Hale.	Stone.
Hanger.	Willacy.

Nays—14.

Barrett.	Hawkins.
Brachfield.	Hicks.
Faulk.	Looney.
Glasscock.	McKamy.
Grinnan.	Skinner.
Harbison.	Smith.
Harper.	Stokes.

Absent—Excused.

Terrell.

### FREE CONFERENCE COMMITTEE REPORT—ADOPTION OF.

Austin, Texas, April 10, 1905.

Hon. Geo. D. Neal, President of the Senate, and Hon. F. W. Seabury, Speaker of the House of Representatives.

Sirs: We, your Free Conference Committee, appointed to consider Senate bill No. 301, beg leave to report that we have had the same under consideration, and recommend that said bill as amended by the House and passed by it be amended by striking out Section 33 thereof, and renumbering consecutively the remaining sections of said bill, and by striking out at the beginning of Section 27 the

words "excepting only said bond emergency fund and."

McKAMY,  
HICKS,  
STONE,  
HAWKINS,  
FAUST,

On the part of the Senate.

LOVE of Dallas,  
HANCOCK,  
FOREE,  
GUINN,  
WILMETH,

On the part of the House.

The report was adopted by the following vote.

Yeas—29.

Barrett.	Hawkins.
Beaty.	Hicks.
Brachfield.	Hill.
Chambers.	Holland.
Davidson.	Looney.
Decker.	Martin.
Faulk.	McKamy.
Faust.	Paulus.
Glasscock.	Skinner.
Griggs.	Smith.
Grinnan.	Stafford.
Hale.	Stokes.
Hanger.	Stone.
Harbison.	Willacy.
Harper.	

Absent.

Meachum. Terrell.

#### FOURTH HOUSE MESSAGE.

Hall of the House of Representatives,  
Twenty-ninth Legislature.

Austin, Texas, April 10, 1905.

Hon. Geo. D. Neal, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has adopted the free conference committee report to Senate bill No. 301 by the following vote: Yeas, 94; nays, 0.

Also concurs in Senate amendments to House bill No. 565 by following vote: Yeas, 91; nays, 0.

Also refused to concur in Senate amendments to House bill No. 361, and a free conference committee is requested and appointed the following on part of the House: Kennedy, Love of Dallas, Williams, McKinney and Holmes.

Respectfully,

BOB BARKER,

Chief Clerk, House of Representatives.

#### HOUSE BILL NO. 441.

Action then recurred on the pending business, House bill No. 441, and

Senator Hill moved that the committee report, which recommended the passage of a substitute bill be adopted.

The motion was adopted.

Senator Looney offered the following amendment:

Amend the Senate substitute by striking out Section 2 thereof, and insert in lieu thereof as follows:

Section 2. Any person desiring to purchase any of said land shall make a separate application for each tract applied for, addressed to the Commissioner of the General Land Office, describing the land sought to be purchased and giving the amount he offers therefor, which shall not be less than the appraised value as fixed by the Commissioner of the General Land Office.

Each application shall be accompanied by the affidavit of the applicant that he desires to purchase the land for a home, and that he is not acting in collusion with others for the purpose of buying the land for any person or corporation, and that no other person or corporation is interested directly or indirectly in the purchase thereof. He shall accompany said application with his obligation to the State duly executed, binding himself to pay to the State on the first day of November of each year thereafter until the whole purchase price is paid, one-fortieth of the aggregate price of said land, with interest at the rate of three per cent per annum, of the whole unpaid purchase money, which said interest shall also be payable on the first day of November of each year. Said application, oath and obligation shall be filed in the land office through due course of mail, and not by anyone in person, in official envelopes, addressed to the Commissioner of the General Land Office at Austin, Texas, and shall have endorsed up on the back thereof, that it contains applications to purchase lands coming upon the market, giving date such lands come on the market. When the envelopes so endorsed are received in the land office, they shall be, safely and securely, and without opening, kept and preserved by the Commissioner or his chief clerk, until the day following the date endorsed thereon as to when the land comes on the market, and the same shall be, at ten o'clock a. m. on the day following the day the lands come upon the market, by the Commissioner or his chief clerk, opened for inspection and such action as herein provided for, in the presence of the applicants, if they desire to be present, or in the presence of such persons as they may designate to represent them, and said applications, immediately upon being opened shall be filed as of the date said land came upon the market; provided, however, that a substantial compliance by the applicant, with the above requirements as to the manner and formality of making, transmitting and filing the application will be re-



garded as sufficient and shall entitle the same to due consideration by the commission.

When the applications and obligations aforesaid have been filed in the General Land Office, and upon inspection they are found correct and the land is found to be classified and valued and upon the market for sale, the day the application was filed, or any prior date, and the first payment is in the State Treasury, it shall be the duty of the Commissioner of the General Land Office to award the land to the one offering the highest price therefor. If two or more applicants offer the same price, the same being the highest price offered, they shall be advised of that fact, and a date fixed not less than thirty days thereafter when they may again file applications, and notice shall be sent to the clerk that said lands are still upon the market to any one, and the date applications to purchase the same may be filed as in the first instance. The applicant offering the highest price shall receive the award. If the second applications should be found to offer the same price, the procedure shall be as in the first instance. An application at a less price than the former application contained shall not be considered. An application to purchase shall not be considered for award prior to the day next following the day the land comes upon the market for sale.

Should there be any tract or tracts of land for the purchase of which no application is filed on or by the day such land goes upon the market, as provided herein, or which has been or may otherwise be placed upon the market, the Commissioner shall receive, file and consider applications to purchase such land whenever filed. All sales shall date from the day the successful applicant's application was filed in the land office. The applicant shall have ninety days from the date of the sale within which to actually settle upon the land so purchased, and he shall within ten days after the expiration of said ninety days, given within which to make settlement, file in the land office his affidavit that he has in good faith actually settled upon the land purchased by him, which affidavit shall be corroborated by not less than two disinterested resident, credible citizens of the vicinity in which said land is situated, and who personally know the facts stated in said affidavit. Should the applicant fail to make and file the affidavit and proof of settlement as herein provided within the time specified, the Commissioner of the General Land Office shall endorse that fact upon his application, cancelling the same, and immediately place the same upon the market by notice to the clerk, fixing a date not less than thirty days there-

from when applications may be filed for the purchase thereof, and any sums which may have been paid upon a former application, cancelled as aforesaid, shall be forfeited to the permanent school fund.

All sums paid in by an unsuccessful applicant shall be returned to him by the State Treasurer.

Provided, if for any cause a designated home or center tract can not be awarded to an applicant and there be no other obstacle to the award of one or more tracts as additional thereto, such applicant shall be permitted, without prejudice, to designate one of the additional tracts as a center tract which shall, with such other tracts as he has applied for and are within five miles thereof be awarded to the applicant. The Commissioner shall advise the applicant why he can not award to him the center tract and request a new designation by his affidavit, and in default of the filing of such affidavit in the land office within thirty days after such notice, the Commissioner may reject all the applications of such applicant, but should no rights intervene such affidavit may be considered at any time prior to a rejection. The affidavit shall be sufficient authority for the change of the center tract, and shall relate back to the date of the filing of the application in the land office.

Senator Glasscock offered a substitute for the amendment and the bill, and pending the discussion of a point of order, raised by Senator Hill, the Chair ruled that the substitute was not in order.

The amendment was adopted.

Senator Glasscock offered the following amendment:

Amend by striking out all after the words "a bill to be entitled" on the first page and insert the following in lieu thereof:

An Act to provide for the sale and lease of the public free school and asylum lands; and to prevent the free use, occupancy and enclosure of the same; and to repeal Chapters 47 and 48, Act of 1895, and Chapter 129, Acts of 1897, and Sections 5, 6, 7 and 8, Chapter 11, Act of February 23, 1900, and Chapter 88, approved April 15, 1901, and Chapter 125, Act of April 19, 1901, and all other laws in conflict herewith.

Be it enacted by the Legislature of the State of Texas:

Section 1. All lands heretofore or hereafter set apart for the benefit of the public free schools, the Lunatic Asylum, the Blind Asylum, the Deaf and Dumb Asylum and the Orphan Asylum, shall be sold and leased under the provisions of this Act.

Sec. 2. The Commissioner of the General Land Office is hereby vested



with all the power and authority necessary to carry into effect the provisions of this act, and shall have full charge and direction of all matters pertaining to the sale and lease of said lands, and their protection from free use and occupancy and from unlawful enclosure, with such exceptions and under such restrictions as may be imposed by the provisions of this act or by the Constitution of the State. He shall, as soon as practicable, adopt such regulations, not inconsistent with the Constitution or this act as may be found necessary for carrying into effect the provisions of the act, and may from time to time alter or amend such regulations as to protect the public interest; but all regulations shall be approved by the Attorney General before adoption or promulgation. He shall adopt all necessary forms of applications for sales or leases and all other forms necessary or proper for the transaction of the business imposed upon him by this act, and may from time to time call upon the Attorney General to prepare such forms, and it shall be the duty of that officer to furnish the Commissioner of the General Land Office with such advice and legal assistance as may be necessary for the proper interpretation and execution of the provisions of this act.

Sec. 3. The Commissioner may from time to time, as seems to him necessary for the protection of any of the funds mentioned in this act, classify or reclassify, value or revalue, any of the lands herein mentioned, upon such facts as may be satisfactory to him, designating them as agricultural, grazing, timber or mineral lands, as the facts may show. He shall notify in writing the county clerk of the proper county of his action affecting any tract of land in such county. Upon receipt of such notice the county clerk shall at once file the same and record it in a well-bound book to be kept for that purpose; and the said county clerk shall note at its proper place on his school and asylum land record book a memorandum of all notices received affecting any tract of land, whether classification or valuation, sale or lease, or termination of such sale or lease. All notices and the record of same shall be open to public inspection, and the clerk shall exhibit them when requested, and any clerk or his deputy who shall fail or refuse to keep said book or books open to inspection, or who shall fail or refuse to exhibit them when requested so to do, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than one hundred dol-

lars, nor more than five hundred dollars, and each failure or refusal shall constitute a separate offense. All notices herein provided for, or certified copies thereof, shall be admissible in judicial proceedings, and prima facie evidence of the facts recited.

Sec. 4. When any portion of said land has been classified and valued to the satisfaction of the Commissioner, it shall be subject to sale at not less than its appraised value; provided that land classed as agricultural shall not be sold for less than \$1.50 per acre, and that classed as grazing at not less than \$1 per acre. It shall be sold to those who will become actual settlers thereon, except where otherwise provided herein, or by other law, and in quantities of not less than eighty acres or multiples thereof, nor more than four sections of six hundred and forty acres each, more or less. A tract or fraction of a section less than one hundred and sixty acres shall be sold as a whole. A tract or fraction of a section less than eighty acres shall be sold for cash, and without condition of settlement. One who is under twenty-one years of age, or who is a married woman, or a corporation, or who has purchased his complement of four sections of land since April 19, 1901, as provided by that act, or who has purchased his complement of four sections under this act, either directly from the State or as assignee prior to the completion of three years' residence by his vendor or vendors, shall not be qualified to purchase under this act; and any award to such person shall not pass title to the land, nor any right therein, but whatever payments made by them upon an accepted application shall be forfeited to the fund to which it may have been credited, and the land shall be subject to sale to another after such award has been cancelled by the Commissioner; provided, that a purchaser who has purchased less than four sections since the 19th of April, 1901, and prior to the passage of this act, may under this act purchase either from the State or assignee as above prescribed sufficient land to complete the four sections allowed to be sold to one purchaser.

Sec. 5. Every additional tract applied for, whether applied for at the same time or after the center tract is applied for, shall be situated within a radius of five miles of a tract which the purchaser shall have chosen as a center tract. One who owns land other than school or asylum land may purchase as much of either of said lands within five miles thereof as additional thereto as herein provided for actual settlers, but in such case he must be or become an actual settler on either his own or some part of the additional land so purchased, and con-

tinue to reside on some part thereof for three years, as is required of actual settlers, and be governed by the same limitations, penalties and requirements as are provided for actual settlers. One may move from any part of his land to any other part at any time during the three years' residence.

Sec. 6. Any person desiring to purchase any of the surveyed lands mentioned in this act shall make a separate application in writing for each tract applied for, and be addressed to the Commissioner of the General Land Office. It shall sufficiently designate the tract sought to be purchased, and shall contain the affidavit of the applicant to the effect that he desires to purchase the land for a home, or as additional to his own private land as the case may be, and that he will in good faith become in person an actual bona fide settler on some portion of the land he purchases, or upon his own private land, as the case may be, within ninety days from the date his application is accepted; also that he is not acting in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation is interested in the purchase thereof; also the applicant shall name in each application the tract which he has chosen as a center tract, and disclose therein what other lands he has purchased since April 19, 1901; he shall also waive all claim and right to any and all minerals except water then known to exist or thereafter found to be in or on the land applied for. He shall accompany the application aforesaid with his obligation to the State, duly executed, binding the purchaser to pay to the State at the State Treasury at Austin, Texas, on the first day of November of each year thereafter until the whole purchase price is paid one-fortieth of the aggregate price with interest at the rate of three per cent per annum on the whole unpaid purchase money, which interest shall also be payable on the first day of November of each year. The said application, oath and obligation shall be filed in the General Land Office through due course of mail, and not by any one in person. At the same time the applicant applies to purchase the land he shall also deposit in the State Treasury one-fortieth of the aggregate price of the same as the first payment thereon. Except as to age and coverture and improvements, an applicant and his application for a whole tract less than eighty acres for cash shall conform to the requirements of applicants and the application herein provided for actual settlers. In no case shall one tract be used for the purchase of more than one complement

of additional land, and this shall apply to tracts heretofore sold, as well as those hereafter sold. All sales under this act shall be made with the reservation of all minerals except water in the land, to the fund to which the land belongs.

Sec. 7. When the application and obligation aforesaid have been filed in the General Land Office as above provided, and upon inspection it is found correct, and the land is found to be classified and valued and was for sale the day the application was filed, and the first payment is in the State Treasury, it shall be accepted by the issuance of an award to the applicant, and the county clerk of the proper county shall be so advised. Within ninety days from the date of the award of the center tract, or of the additional land if it is applied for as additional to private land, the applicant, if he has applied as an actual settler, shall become in person an actual bona fide settler upon some portion of the land awarded to him or upon his private land, as provided in this act, and continue to reside upon some portion of his purchase or his private land, as the case may be, until the end of three consecutive years, counting from the date of the award. In default of such settlement, or of such continual residence, the land shall be forfeited by the Commissioner of the General Land Office, upon sufficient evidence of that fact. The purchaser shall, within the three years required for residence, place permanent improvements upon some portion of the land purchased from the State, to the reasonable value of three hundred dollars. In default of the placing of such improvements upon the land, the entire purchase shall be subject to forfeiture by the Commissioner, upon sufficient evidence of that fact. After the expiration of three years' residence, counting from the date of the award of the center tract, the owner who completed such residence, or his vendor, in the event he has an interest in the land by lien or otherwise, or the heir or heirs, or legal representatives of such person, shall file in the General Land Office a good and sufficient proof of such three consecutive years' residence, and of improvements, by his own affidavit, corroborated by the affidavit of three credible and disinterested persons who are cognizant of the facts from their own personal knowledge. The credibility of the witnesses shall be certified to by the officer taking the affidavit. Any officer having a seal is authorized to administer the oaths required under this act. If such proof is filed within five years from the date of the award of the center tract, and neither the settlement, residence nor lack of improvements have been attack-

ed, the Commissioner shall, upon request and payment of a fee of one dollar, issue his certificate of the sufficiency of such proof, and it shall be conclusive, and the same may be recorded in the deed records in the county where the land lies, as evidence of his title to such lands, and a certified copy of the same may be used as evidence, as other recorded instruments. This shall apply to certificates heretofore issued, as well as those hereafter issued. The three hundred dollars' worth of improvements required shall, in every instance, be placed on some portion of the land purchased from the State, and that amount shall be sufficient for all the lands so purchased, whether purchased at one time or at different times. No award of an additional tract shall be made prior to an award of the center tract.

Sec. 8. Should two or more applications be filed at the same day on the same land, and there is no obstacle to an award, the one offering the highest price shall receive the award; provided, such offer is not less than the appraised value thereof; but if they offer the same price, each shall be advised of that fact and a request for each to submit sealed applications under instructions given, which applications shall be opened on a day named and in the presence of the applicants, if they so desire, or in the presence of such person as they may authorize to represent them. The one offering the highest price shall receive the award. If the sealed applications should be found to offer the same price, the procedure shall again be as in the first instance. An application at a less price than the former application contained shall not be considered. One desiring to contest an award on the ground of non-settlement, abandonment or failure to make the improvements required, may do so prior to the issuance of the certificate of occupancy, by filing evidence of the facts with the Commissioner. The contestee shall be advised of the nature of the attack, and if he desires to submit the issue to the Commissioner, he may do so by filing such evidence as he desires. The Commissioner's action thereon shall be final. If the attack is sustained, the award shall be canceled by the Commissioner, and the contestant advised and given a preference for thirty days to purchase the land, provided he shall offer as much therefor as another who may have, in good faith, filed in the meantime or on the same day. If the attack is not sustained, a certificate of occupancy shall be issued when demanded. If the parties do not agree to submit the issue

to the Commissioner, the contestant may file an application for the purchase of the land, which shall be sufficient basis for a suit of trespass to try title, and if the issue is determined in his favor, he shall have a preference for thirty days to purchase on same conditions as the contestant above. If a contestee refuses to reply to a notice of contest given by the Commissioner, a second notice shall be given, and if he refuses to reply within a reasonable time, the allegation shall be taken as confessed and the award canceled. All applications shall be effective from date of filing in the Land Office.

Sec. 9. After purchasers shall have resided upon their land three consecutive years from date of award, and improved the same, and filed sufficient proof of these facts in the Land Office, as required by this act, they shall have the option of paying out same in full, together with the necessary fees, and obtain patent therefor, but no tract shall be patented until after the expiration of three years' residence after date of award, except in cases where a town of twenty or more business houses and residence houses, or either, or both, may be located upon any tract prior to the completion of said three years' residence. In that case such tract may be patented after sufficient evidence of that fact shall have been filed in the Land Office, together with a properly certified and recorded plat of it, and sufficient evidence from the purchaser or owner that the statute with reference to settlement and occupancy of the land has been complied with to the time patent was applied for.

Sec. 10. Purchasers under this act may sell their land, or a part of the same, at any time after they have become an actual bona fide resident thereon, or on the private land to which it may have been purchased as additional, but in legal multiples only. In the case of such sale prior to three years from the date of the award by the Commissioner, the assignee shall, on the date of his transfer, become an actual bona fide resident upon some portion of the land he has so purchased, whether school land or the vendor's individual center tract, if it were purchased by the assignee, together with its additional land, and continue such residence until a completion of the three years' residence required from the date of the award of such tract or tracts, and of each of such tracts, according to the terms of the purchase by his vendor. Such purchaser shall take the benefit of both the occupancy and improvements of his vendor. He shall file in

the Land Office his duly authenticated transfer, after having it recorded in the proper county or counties, together with his substitute application and obligation, the same as required of an original purchaser. The vendor shall thereby become absolved from further liability thereon, and the vendee shall take such title only as his vendor had, and be subject to all the privileges, penalties and obligations as were upon his vendor. For the purpose of buying other additional lands, such vendee shall be treated as an original purchaser of the amount of the land so purchased by him as assignee. If the three years' residence has been completed and the required improvements made, and proof of that fact filed in the Land Office, the vendee may be substituted for his vendor, by filing in the Land Office his duly authenticated transfer, after having it recorded in the proper county, or counties, together with his obligation. All transfers shall be accompanied with a fee of fifty cents for each deed, as a filing fee; this fee shall apply to transfers of land heretofore sold, as well as those for land hereafter sold. The State Treasurer shall be advised by the Commissioner of all transfers filed in the Land Office. Any transfer or agreement to transfer any land purchased under this act, to any corporation, whatsoever, before patent has been issued, shall ipso facto work a forfeiture, and upon being presented with such transfer or agreement to transfer, the Commissioner of the General Land Office shall cancel the award, and proceed to award the land embraced therein to another, as if no award of the land had ever been made by him.

Sec. 11. If, upon the first day of November of any year, any portion of the interest due on any sale made under this act, or any former law remains unpaid, the Commissioner of the General Land Office shall, upon information of that fact from the State Treasurer, indorse on the obligation "Land Forfeited," and shall cause an entry to that effect to be made on the account kept with the purchaser, and thereupon said land shall be forfeited and revert to the fund to which it originally belonged, and be resold under the provisions of this act or any future law. But if the purchaser shall die, his heirs or legal representatives shall have an extension of one year in which to make payment after the first of November next after such death, and such heirs and their assignees shall be absolved from the requirement of further settlement and improvement of the land. The owner at the date of forfeiture shall have his land reinstated upon written request made to the Commissioner, and the payment in full of all

interest due, provided no right of third parties has attached at the time of filing such request.

Sec. 12. The Commissioner is authorized to sell and patent in quantities of not less than one, nor more than twenty, acres of any of the land mentioned in this act as sites for churches, cemeteries or school houses. When it is desired as a location for a school house, the patent shall be issued to the county judge of the proper county and his successors in office for school purposes; and when it is desired for a church house or cemetery, it shall be issued to the trustees designated by those requesting the patent, and their successors, in trust for the proper purposes. If the land has not been previously sold by the State, the county judge or trustees, as the case may be, shall file with the Commissioner an application and affidavit only, setting out the land desired, and stating the purpose for which it is wanted. If the land has been sold by the State, and not patented, the owner thereof shall execute a deed therefor to the county judge or trustee, as the case may be, and after it is recorded by the proper county clerk, it shall be filed in the Land Office, and the vendor shall receive credit on his account for the value thereof. The county judge or trustees must pay the State Treasurer the value of the land. If it be unsurveyed land desired for such purposes, the county judge or the trustees, as the case may be, shall proceed the same as an individual for the purchase of such land, but shall not be required to pay to the State more than one dollar per acre therefor. The Land Commissioner is hereby authorized to deduct from the sale or lease of any school, university or asylum land the area which the State heretofore authorized railroads to use, and which is so used and patent has not yet issued. Any purchaser of such lands desiring to have the land occupied by any railroad deducted from his purchase, and has not given or sold to such railroad the right of way across such land, may have such right of way deducted from his purchase by furnishing the Land Commissioner with satisfactory evidence of the fact that the right of way had not been granted by himself or any one under whom he holds title, and also furnishing corrected field notes of such land, deducting the said right of way. But all such changes must be done at the cost of the owner; where the railroad divides a tract, the patent may issue as one tract of land. Where the land is leased, the Land Commissioner, on the request of the leaseholder, may deduct the amount of land used as the right of way, and



may use as a base of calculation two hundred feet as to the width of such right of way, the length of the road to be ascertained by any method satisfactory to him. Any railroad company having occupied any such school, university or asylum lands shall be authorized to buy the right of way so occupied by such railway company, as much as two hundred feet wide, from the State, by having field notes made of such right of way. The price of such land shall be the same as for which such land was sold to the original purchaser, with interest thereon from the date of this act.

Sec. 13. Any person desiring to purchase any portion of the unsurveyed school lands shall first make a written application to the surveyor of the proper county or district in which the land, or a portion thereof, is situated, signed and sworn to by the applicant, giving his postoffice address, and designating the land he desires, by metes and bounds, as nearly as practicable, and stating that he desires to have the land surveyed with the intention of buying it, and that he is not acting in collusion with, or attempting to acquire said land for, another person or corporation. It shall be the duty of the surveyor to file and record such application, and to survey the land and file the application and field notes in the Land Office within ninety days from the date of the filing of the application, together with a properly prepared and certified sketch of the survey, with the variations at which all lines are run. The land shall be surveyed under the instructions of the Commissioner of the General Land Office, and where practicable into sections of six hundred and forty acres each, and of a regular form. The applicant shall pay to the surveyor one dollar as a filing fee, and his further lawful fees for surveying the land. When the surveyor returns the application and field notes to the Land Office, he shall report under oath the classification and market value of the land, and also the timber thereon and its value, which may be considered in connection with such other evidence as may be required in determining the class and price to be given the land or timber. If, upon inspection of the papers, the Commissioner is satisfied from the report of the surveyor and the records of the Land Office, that the land is vacant and belongs to the school fund, and the survey has been made according to law, he shall approve same and notify the applicant that the land is subject to sale to him, stating the classification, price and terms, which shall be the same as

that for surveyed lands, except as herein provided; provided, all unsurveyed vacant tracts not disclosed by the official maps in use in the Land Office at the time an application for the survey is filed, may be sold for cash, or for one-fortieth cash, with five per cent interest on the deferred principal, and without condition of settlement and improvement, and with the right to pay the same out at any time and obtain patent; all unsurveyed vacant tracts which are subject to overflow, or situated in bottoms or swamps, or otherwise so as to be unsuitable for settlement, may be sold for cash, or for one-fortieth cash, with five per cent interest on the deferred principal, and without condition of settlement and improvement, and with the right to pay the same out at any time and obtain patent; all unsurveyed vacant tracts not exceeding six hundred and forty acres, and not less than eighty acres, which are disclosed by the official maps in use in the Land Office at the time an application for a survey is filed, and which are now or may be entirely surrounded by valid headright surveys or sold school surveys, shall be sold as a whole, and may be sold for cash, or for one-fortieth cash with five per cent interest on deferred principal, and without the condition of settlement and improvement, and with the right to pay same out at any time and obtain patent; all unsurveyed vacant tracts less than eighty acres shall be sold as a whole, and for cash, without condition of settlement and improvement; all other unsurveyed vacant tracts disclosed by the official maps in use in the Land Office when an application for survey is filed shall be sold on condition of settlement and improvement as provided in this act for the sale of surveyed land; provided, that land heretofore or hereafter recovered by the State from claimants holding or claiming same under Spanish or Mexican titles shall be considered as vacancies disclosed by the official maps, and the person who in good faith so held or claimed such land under the claim aforesaid, and who, prior to the filing of suit thereon by the State, placed two hundred dollars' worth of improvements thereon, shall have a prior right for ninety days after the taking effect of this act, or after the date of the final recovery of such land hereafter, to file on the purchase four sections of six hundred and forty acres each for cash, or for one-fortieth cash with five per cent interest on the deferred principal, and without the condition of settlement, and with the right to pay same out at any time and obtain patent. When the land is applied for and purchased under this section, without condition



of settlement and improvement, the applicant and application shall otherwise conform to the requirement of applicants and applications for surveyed tracts of less than eighty acres. In all cases of the sale of any land on deferred payments and without the condition of settlement and improvement, as provided for in this section, the merchantable timber thereon, if any, shall first be paid for in cash. All land appropriated to the public school fund by the act of February 23, 1900, and which has heretofore been surveyed at private expense, may be sold under the provisions of this section relating to undisclosed vacancies and swamp lands. If within sixty days from the date of the notice of approval of any survey as herein provided, the applicant shall not have filed in the Land Office his purchase application at the appraised value fixed on the land, and in compliance with this section, such land shall be placed on the market for sale, upon the same terms and conditions as other surveyed school land.

Sec. 14. The Commissioner shall adopt such regulations for the sale of timber on the timbered lands as may be deemed necessary and judicious, and he may also prescribe the kind and size of the trees to be cut therefrom, and the method of cutting, or may require complete or partial clearing, or the replanting of the land in trees designated by him, under such supervision and regulation as he may deem necessary for the best interest of the fund to which the land belongs. Such timber shall not be sold for less than five dollars per acre, cash, except in such cases as the Commissioner may ascertain by examination by himself or an approved agent appointed by him for that purpose, to be sparsely timbered, or containing timber of but little value, in which case he may sell the timber on such tract or part of tract at its proper value. Such purchaser shall have five years from the date of his purchase within which to remove the timber therefrom, and in case of failure to do so, such timber shall thereby be forfeited to the State without judicial ascertainment; provided, that all timbered lands from which the timber has been cut and taken off may be placed on the market and sold as agricultural, grazing or mineral lands, according to classifications to be made by the Land Commissioner; provided, that upon application of the purchaser of any such timber made within five years from the purchase of such timber, the Commissioner shall have said land classified at the expense of the owner of said timber, as agricultural, grazing or mineral land, and the owner of said

timber shall have the right to purchase said land at the valuation fixed by said Commissioner, on the same terms and conditions as other land of like classification is sold, but not to exceed one section to any one purchaser.

#### Lease.

Sec. 15. Any person desiring to lease any portion of the unsold and unleased lands mentioned in this act shall make an application in writing, addressed to the Commissioner of the General Land Office, sufficiently designating the lands sought to be leased, and include all the lands within the limits of the land applied for, by omitting no intervening tract. Such application shall be filed in the Land Office, through due course of mail, and not by any one in person. If the land applied for is not in demand by purchasers, and is otherwise subject to lease, the first application so filed shall be accepted, when the applicant and Commissioner have agreed upon a price not less than three cents per acre, and the term, which shall not exceed five years, except as provided under the bond provision of this act. When the Commissioner is satisfied the applicant has paid to the State Treasurer the first annual rental in advance, he shall issue a lease contract in the name of the applicant, covering the lands agreed upon, which contract shall be mailed to the county clerk of the county in which the land or a part thereof is situated. Said clerk shall note on his records of school lands and opposite each tract, the name of the lessee, the number of the lease, its date and term. For entering said memorandum the clerk shall receive a fee of twenty-five cents from the lessee, and upon payment of said fee the lease contract shall be delivered to the lessee.

Sec. 16. Lands leased in the following named counties prior to April 19, 1901, shall be subject to sale at any time after April 19, 1906, and the lands leased in those counties since April 19, 1901, shall be subject to sale at any time, regardless of whether or not the lease has expired, except such sections as contain permanent natural or artificial water, or on which there are two hundred dollars' worth of improvements, to wit: Borden, Bandera, Coke, Dawson, Frio, Garza, Glasscock, Howard, Irion, Kent, Kerr, Lynn, Martin, Mason, Menard, Mitchell, Reagan, Schleicher, Scurry, Sterling, Tom Green, Uvalde. Lands hereafter leased in the counties above named shall be subject to sale at any time, except such tracts as contain permanent natural or artificial water or on which there are improvements of the value of two hundred dollars. Lands here-

tofore or hereafter leased in any county other than in the above named shall not be subject to sale to any one prior to the termination of the lease. When any lease is terminated, the land shall remain on the market for sale sixty days, and if not applied for by a purchaser, the former lessee or assignee of the entire leasehold shall have a preference to another lease of the land, upon such terms as may be agreed upon; provided, he shall file his renewal application therefor during the said sixty days, and his new contract shall date from the termination of the former one. All improvements placed upon a leasehold shall be deemed personal property, and the owner of the leasehold shall have sixty days after the expiration of his lease to remove same.

Sec. 17. An original lessee, or the assignee of an entire leasehold, by an instrument in writing, or any bona fide assignee of a part of a lease, evidenced by an assignment in writing, executed prior to March 17, 1902, and who is now in possession under said assignment, shall have a preference right to buy the quantity of land allowed to one purchaser, if he is qualified to purchase; also one who was the assignee of a lease, by an instrument executed prior to January 1, 1905, and who does not own all of such lease, shall have a preference right to purchase one section of such land of which he was the owner of the lease on said date. The preference period herein provided for shall begin with the termination of the lease. Should another than the person exercising the preference file an application to purchase the same land at application at the price offered by the one who has the preference, the Commissioner shall notify the one who is applying under his preference the price offered by the applicant offering the highest price, and the one who has the preference shall be given twenty days in which to file a new application at the price offered by the applicant who has offered the highest price. Upon receipt of such application the applicant shall receive an award to the land. If the applicant having the preference does not file a new application within said twenty days, the land shall be awarded to the one who has offered the highest price. One desiring to exercise this preference shall file with the clerk of the proper county in which the land is situated, and also in the Land Office, a written designation of the tracts he so desires to purchase. The notice shall be filed at least ten days prior to the termination of such lease, and not thereafter, and such person shall not be permitted to make another selection to the detriment of another

after the lease shall have terminated. If such designation is not filed as aforesaid, it shall be proof of the waiver of all preference right. Within ten days after such expiration the person exercising the preference herein given shall file proper purchase application for the land designated, and failing to do so the land shall be open to other applicants. Such of the tracts as are applied for under the preference herein given, on each of which there are five hundred dollars' worth of permanent and immovable improvements, need not be situated within the five mile radius of the center tract, as required of other purchasers.

Sec. 18. Any person desiring to lease any portion of the lands aforesaid in Crockett, Val Verde, Brewster, Pecos, Edwards, Reeves, Jeff Davis, Presidio, Starr, Zapata, Webb, El Paso, Sutton, Winkler and Loving counties, on which no permanent water supply exists, shall notify the Commissioner in writing that he desires to lease lands, specified and describing them, provided he can obtain the necessary supply of water, by boring or otherwise, and that he will within ninety days lease said land, provided such water supply can be obtained; he shall also make and file with the Commissioner his bond, with good and sufficient personal security, in a sum equal to one year's rental of the quantity of land applied for, payable to the State of Texas, at the State Treasury at Austin, Texas, conditioned that he will diligently and in good faith try to secure water on such land during such ninety days, and if secured will lease the designated lands for a term not to exceed ten years, and thereupon the Commissioner shall for such ninety days withhold the lands thus designated from lease to any other person. Within or at the expiration of said ninety days and annually after succeeding annual rentals become due, the lessee shall pay to the State of Texas, in advance, one year's rental of the land applied for by him. On satisfactory proof of the first payment, the Commissioner shall execute and deliver to the lessee a lease of the said lands, signed by himself officially, and attested by the seal of the Land Office, together with which he shall deliver up the bond of said lessee, marked "Satisfied." A lease under this section shall date from the time the application was filed in the Land Office. If the said applicant shall fail to apply for his lease and make the payments aforesaid within ninety days, and shall also within said ninety days fail to make proof to the satisfaction of the Commissioner within that time that he has in good faith and diligently used proper means and

expended proper efforts to secure a water supply on such land and failed, then and in that case the Commissioner shall mark said bond "Forfeited," and shall deliver the same to the Attorney General of the State, who shall at once cause the said bond to be sued upon and collected, or otherwise settle the claim upon terms satisfactory to the State. Such collection shall become a part of the available fund to which the land belongs. The penalty stated in such bond is hereby declared to be liquidated damages, and judgment for that sum shall in all cases be recovered by the State. Proof satisfactory to the Commissioner that proper, suitable and diligent effort has been made by such applicant within the ninety days to secure water, and that sufficient water could not be secured, shall relieve the principal and sureties on said bond from all responsibility thereon, and it shall be marked "Satisfied" by said Commissioner, and delivered to the principal therein, provided such proof is made within ninety days of the date of such application, and not after such time. No lease of less than four sections of dry grazing land shall be made under this section; unless such less number includes all unleased land in that vicinity belonging to the several funds mentioned in this act. Lessees under this section, or an assignee of an entire leasehold which was procured under this section, who shall have at their own expense secured water on their leasehold, in accordance with the provisions of this section, shall at the expiration of their lease contract have a right to the renewal of their lease for another term of five years, at a price to be agreed upon with the Commissioner, but at not less than three cents per acre, by giving written notice to the Commissioner by the time the lease expires; provided, the land is not in demand for purchase, and in that event the lessee or his assignee of an entire leasehold shall have the same preference to buy as provided for in the preceding section, but should the land be improved and awarded to another, then the owner who attempted to exercise his preference by making application in good faith to purchase same, then the one to whom it was awarded shall pay to such owner the value of the improvements thereon, which may be collected as any other debt, and be enforced against the land as a lien thereon subject to the rights of the State and funds at interest.

Sec. 19. If any lessee shall fail to pay the annual rent when such rent shall become due, the Commissioner of the General Land Office may declare such lease canceled by writing under his hand and seal of office, which writ-

ing shall be filed with the other papers relating to such lease, and thereupon such lease shall terminate, and the land so leased shall become subject to purchase or lease under the provisions of this act, or if the Commissioner so elect he may decline to cancel the lease, and so notify the lessee or his assignee, and thereafter if rent is not paid when due, the same may be recovered by suit in the proper court of Travis county, Texas. During the continuance of all leases, and after forfeiture, the State shall have a lien upon all property owned by the lessee upon the leased premises to secure the payment of all rents due, which lien shall be superior to all other liens whatsoever; and it shall not be essential to the preservation or validity of such lien that it shall be preserved in the instrument of lease.

Sec. 20. All leases under this act shall be made with the reservation of all minerals, except water, in the land to the fund to which the land belongs, and all lands leased under this act shall be subject during the term of the lease to the provisions of all present and future laws providing for the sale of mineral lands, mining claims or mineral rights, and for prospecting for minerals.

Sec. 21. The Commissioner shall retain in his custody as records of the General Land Office all applications, affidavits, obligations and all other papers relating to the sale and lease of said land, and shall cause to be kept accurate accounts with each purchaser. All purchase money due upon lands, as well as accrued interest, and all other money arising from the sale or lease of said land shall be paid by the purchaser or lessee direct to the Treasurer of the State, who shall cause an accurate account to be kept with each purchaser and lessee, and who shall execute duplicate receipts for all sums of money paid to him under the provisions of this act, one of which receipts shall be delivered to them or their agent, and the other transmitted to the Commissioner of the General Land Office.

Sec. 22. All fees collected by the Commissioner under this act shall be paid over to the Treasurer at the end of each month, and by the latter credited to the general revenue.

Sec. 23. When any of the lands described in this act, or any of the other public lands of the State held or owned by any fund, or any lands in which this State or any of such funds have an interest are held, occupied or claimed by any person or association or corporation adversely to the State or to such fund it shall be the duty of the Attorney General to institute suit therefor, together with rent thereon, and for damages thereto; and

for the purpose of any such suits for such lands, rents or damages, or affecting the title thereto or right growing out of same, the venue thereof is fixed in Travis county, Texas, concurrently with the county of the defendant's residence, and the courts of said county shall have the same jurisdiction over the defendant and the subject matter of the same as if such defendant resided and such property was situated in said county. However, should such land so held, occupied or claimed by anyone adversely to the State, or to such fund, be so held, occupied or claimed as a part of an adjacent survey, and from the records of the land office and the report of the proper surveyor such land should not appear to be so embraced in such field notes of any other survey that should appear from said records and surveyor's report to be vacant land belonging to any fund mentioned in this act, the Commissioner may sell same under the provisions of this act relating to the sale of unsurveyed land.

Sec. 24. If the Governor shall at any time be credibly informed that any portion of the public lands, or the lands belonging to any of the several funds named in this act, have ever been or are enclosed, or that fences have been erected thereon without authority of law, he is authorized in his discretion to direct the Attorney General to institute suit in the name of the State for the recovery of such lands, and damages, or take such action as may be necessary to settle the claim without suit. The sum to be recovered in case of suit shall not be a less amount than the amount of all the rental of all the land within such inclosure and controlled by the State, to be estimated at not less than five cents per acre per annum. For the recovery by the State of all lands sold under the provisions of this act or any former act, and for the recovery of any money due the State for the use or occupancy or unlawful inclosure or for nonpayment of any rental on leases made under this act or any former law, jurisdiction is expressly conferred on the proper courts of Travis county, Texas, concurrently with the proper courts of the county in which the land is situated, at the election of the Attorney General, which suit shall be brought by him or under his direction. In suits provided for in this section the court shall issue a writ of sequestration, when requested to do so, directed to any sheriff of the State, commanding and requiring such officer to take such land and property thereon belonging to such person or persons so unlawfully using, occupying or enclosing said land, into his custody, and hold same subject to further orders of the court. The State shall not be required to give bond.

Such writ of sequestration may be executed by any sheriff of the State into whose hands it may be delivered, and it shall be the duty of any sheriff into whose hands it may come to proceed at once to the execution of such writ. The defendant in such suit may replevy as in ordinary cases by giving bond as prescribed by law, and such cases shall have precedence on the docket and stand for trial before any other cases. In the event suit should be brought against an original lessee, and who may have sold or transferred such leasehold, such transfer shall not be available as a defense nor operate to relieve such defendant of liability unless such transfer was for a valuable consideration, and filed for record and recorded on the lease records of the proper county or counties before termination of any lease theretofore made, and before such suit was instituted. In case judgment is recovered by the State in such suit, all improvements on such land shall be forfeited to and become the property of the fund to which such lands belong, and the defendant shall, in addition to the forfeiture of such improvements, pay whatever additional sum or sums for which judgment may be rendered, and cost of suits, including attorneys' fees of 10 per cent on the amount recovered. Appeal may be prosecuted from all judgments in such cases, but the State shall not be required to give bond to perfect its appeal. Such cases on appeal shall have precedence over all other cases.

Sec. 25. When one purchases, leases or controls land within the enclosure of another, and has water on same, he shall not be permitted to turn loose within said enclosure more than one horse, one mule or one cow, or in lieu thereof four head of sheep or goats, for every ten acres so owned, leased or controlled by him and not enclosed by him; but if there is no water supply on the land of such purchaser or lessee in said enclosure, he shall not be permitted to turn loose more than one horse, or one mule, or one cow, or in lieu thereof four head of sheep or goats, to every fifty acres of land so leased or owned, or controlled and not enclosed by him; provided, that where there is no water on the land purchased or leased, the purchaser or lessee shall pay to the owner of such enclosure having water therein the sum of twenty-five cents per head per month for each horse or mule, and ten cents per head per month for each head of cattle so turned loose in said enclosure. Each violation of the provisions of this act which restricts the number of stock which one may turn loose within an enclosure shall be an offense, and the offender, on conviction, shall be pun-



# Sacred to the Memory of

## Hon. W. C. Bryan

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By Senator Hawkins:

Whereas, We have learned with profound regret of the death of Col. W. C. Bryan, which occurred at his home at Abilene, Texas, April 9th, 1905, he being a distinguished pioneer, and prominent in the early settlement of Texas, and intimately associated with Texas' early history; and

Whereas, said W. C. Bryan was also the father of Hon. W. J. Bryan, a member of the House of Representatives of the Twenty-ninth Legislature,

Therefore, Be It Resolved by the Senate of the State of Texas, that the sympathy and condolence of the membership of this body be extended to the relatives and family of the late W. C. Bryan and especially to the Hon. W. J. Bryan, a member of the House, in this, their sad bereavement.

Resolved further, That a page in the Journal be set apart for this resolution.

The resolution was read and unanimously adopted.





ished by fine of not less than one dollar for each horse, cow, mule, or for every four head of sheep or goats in excess of the number allowed so turned loose, and each thirty days' violation of this provision shall constitute a separate offense. In suits for damages for the violation of the provisions of this section it shall not be necessary to make any person or persons a party or parties to such suits, except the person or persons violating the provisions hereof.

Sec. 26. Chapters 47 and 48, Act of 1895; and Chapter 129, Act of 1897; and Sections 5, 6, 7 and 8, of Chapter 11, Act of February 23, 1900; and Chapter 88, Act of April 15, 1901; and Chapter 125, Act of April 19, 1901; and all other laws in conflict with the provisions of this act, are hereby repealed.

Sec. 27. The importance of the revision of the school and asylum land law, and the possible crowded condition of the calendar by the time this bill is reached, rendering it improbable that it may be read upon three separate days in each house, creates an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three separate days in each House be suspended and that it be put upon third reading and final passage, and that it take effect from and after its passage, and it is so enacted.

#### RECESS.

On motion of Senator Davidson, the Senate took a recess till 3 o'clock p. m.

#### AFTER RECESS.

The Senate was called to order by President Pro Tem. Hanger.

#### HOUSE BILL NO. 597.

On motion of Senator McKamy, the pending order of business, House bill No. 441, was suspended, and the Senate took up, out of its order, House bill No. 597.

The Chair laid before the Senate on second reading,

House bill No. 597, a bill to be entitled "An Act to define the method of computing the annual franchise tax payable by private, domestic and foreign corporations; to repeal all laws and parts of laws in conflict with the provisions of this act, and declaring an emergency."

On motion of Senator McKamy the committee report was adopted.

Bill read second time and passed to a third reading.

On motion of Senator McKamy the

constitutional rule requiring bills to be read on three several days was suspended and the bill put on its third reading and final passage by the following vote:

#### Yeas—28.

Barrett.	Hawkins.
Beaty.	Hicks.
Brachfield.	Hill.
Davidson.	Looney.
Decker.	Martin.
Faulk.	McKamy.
Faust.	Meachum.
Glasscock.	Paulus.
Griggs.	Skinner.
Grinnan.	Smith.
Hale.	Stafford.
Hanger.	Stokes.
Harbison.	Stone.
Harper.	Willacy.

#### Absent.

Chambers. Holland.

#### Absent—Excused.

Terrell.

The bill was read third time and passed by the following vote:

#### Yeas—28.

Barrett.	Hawkins.
Beaty.	Hicks.
Brachfield.	Hill.
Davidson.	Looney.
Decker.	Martin.
Faulk.	McKamy.
Faust.	Meachum.
Glasscock.	Paulus.
Griggs.	Skinner.
Grinnan.	Smith.
Hale.	Stafford.
Hanger.	Stokes.
Harbison.	Stone.
Harper.	Willacy.

#### Absent.

Chambers. Holland.

#### Absent—Excused.

Terrell.

Senator McKamy moved to reconsider the vote by which the bill was passed, and lay that motion on the table.

The motion to table prevailed.

#### SIMPLE RESOLUTION.

By Senator Harper:

Whereas, The regular session of the Legislature will end next Saturday at noon; and,

Whereas, By reason of the fact that no appropriation for the support of the State government has been made or will probably be made during the

regular session, and a special session of the Legislature will be called; and, Whereas, If a special session is called it will be limited to those matters mentioned in the call, and as large numbers of officers, clerks and employees will not be necessary; therefore be it

Resolved, That the President of the Senate be authorized to appoint a committee of five Senators, whose duty it will be to designate the officers, clerks and employees to be retained during the special session, if one is called, and all other officers, clerks and employees are notified that their services are dispensed with at the close of the regular session.

SMITH.  
HARPER.  
PAULUS.

The resolution was read and laid on the table subject to call.

#### PENDING BUSINESS—HOUSE BILL NO. 441.

Action then recurred on House bill No. 441, pending business.

Question being on the amendment by Senator Glasscock.

Pending the reading of the amendment, on motion of Senator Hawkins the same was dispensed with.

Senator Hill moved to table the substitute amendment by Senator Glasscock.

#### HOUSE BILL NO. 480—REFUSED TO TAKE UP.

Senator Decker moved that the pending order of business (House bill No. 441) be suspended and the Senate take up, out of its order, House bill No. 480.

The motion was lost by the following vote:

Yeas—16.

Barrett.	Hill.
Chambers.	Holland.
Decker.	McKamy.
Faust.	Skinner.
Hale.	Stafford.
Hanger.	Stokes.
Harbison.	Stone.
Hicks.	Willacy.

Nays—10.

Brachfield.	Harper.
Davidson.	Hawkins.
Faulk.	Looney.
Glasscock.	Martin.
Grinnan.	Smith.

Absent.

Beaty.	Paulus.
Griggs.	Terrell.
Meachum.	

#### FREE CONFERENCE COMMITTEE REPORT.

Austin, Texas, April 10, 1905.

Hon. Geo. D. Neal, President of the Senate, and Hon. F. W. Seabury, Speaker of the House of Representatives.

Sirs: We, your Free Conference Committee, heretofore appointed to reconcile and adjust the differences between the Senate and House on Substitute Senate bill No. 43, recommend that the following bill be substituted for the said Substitute Senate bill No. 43, and all amendments, viz.:

(Free conference bill for Substitute Senate bill No. 43.)

A bill to be entitled "An Act relating to State and county finances and the finances of cities incorporated under the General Laws of this State, providing for a system of State, county and city depositories for said State, county and city funds, for the selection and designation of such depositories; to provide penalties for the violation of the provisions of this act, and to repeal all laws and parts of laws in conflict herewith.

Be it enacted by the Legislature of the State of Texas.

Section 1. It shall be the duty of the State Treasurer at the times and in the manner provided in this act to designate a bank or banking institution in each Senatorial district of the State of Texas which shall be known as a State depository. Said bank or banking institution must be a National bank or an incorporated company authorized to do business in the State of Texas, and each said depository shall be established and conducted in accordance with and subject to the provisions of this act. Other depositories may be selected in lieu of those not selected from and for Senatorial districts as provided for herein.

Sec. 2. Immediately upon the qualification of each State Treasurer elected at a general election after this act takes effect, it shall be his duty to cause to be printed a circular letter soliciting bids for keeping the public funds of the State for a term of two years next after the succeeding March 1 upon the conditions prescribed in this act. Said circular letter shall state the conditions to be complied with by the bidders, as hereinafter provided, and what each bid shall set forth, and shall require such bids to be forwarded to the State Treasurer on or before 12 o'clock noon of the first Monday in February thereafter, and shall require that each bid shall be accompanied by a certified check for the sum of five hundred dollars, payable to the order of the State Treasurer, which shall become forfeited to

the State in case said bid shall be accepted and the bidder shall fail to comply with the requirements, as provided by this act, for the qualification of depositories; otherwise such check shall be returned to the bidder. The Treasurer shall mail a copy of such circular letter to each of the banks or banking institutions in the State of the class before mentioned, and shall immediately deposit with the Comptroller and Attorney General a copy of such circular letter, and attach thereto a list of those to whom it has been mailed, as above provided, such copy and list so filed, to be certified by the State Treasurer under his seal of office. The State Treasurer shall also keep a copy of such letter, and a list of those to whom it has been sent, on file in his office for the inspection of any person desiring to examine the same.

Sec. 3. Bids sent to the State Treasurer shall be sealed up in a strong envelope and marked "Bid for the safe-keeping and payment of the deposits of the State funds," and the State Treasurer shall indorse thereon the time of the receipt of such bid. Such bid shall state the interest such bank will pay on the average daily balances to the credit of the State Treasury in such bank. Said bids shall be directed to the State Treasurer, and by him opened on the first Monday in February thereafter, in the presence of the Comptroller and Attorney General, and thereupon the Treasurer shall select and designate, with the approval of the Comptroller and Attorney General, one of such banks or banking institutions as the depository of the State for each Senatorial district. The Treasurer may, with the approval of the Comptroller and Attorney General, reject any or all bids, and in any case the bank or banking institution offering the highest interest from each Senatorial district shall be selected, if any. No award of State money shall be made upon any bid therefor greater than the paid up capital stock of the bank making such bid.

Sec. 4. When said bank or banking institution of any senatorial district so designated by the State Treasurer has complied with the conditions of this act it shall be authorized to receive on deposit from the State Treasurer or under his direction State funds not exceeding fifty thousand (\$50,000) dollars for any one bank, and it shall be the duty of said State Treasurer to cause the funds of the State to be deposited in said State depositories subject to the conditions and limitations of this act.

Sec. 5. Before the State Treasurer is authorized to deposit any State funds in any State depository herein

provided for or to cause the same to be so deposited, he shall satisfy himself as to the solvency of said institution, and in addition thereto he shall require a bond in the amount of twenty-five thousand (\$25,000) dollars, which bond shall be payable to the Governor and to his successors in office, and said bond shall be conditioned for the safe keeping of said funds deposited and to meet the requirements of this act, in such form as the Attorney General shall prescribe, and the same restrictions and requirements as to sureties thereon shall apply as is now or may be hereafter required in the bond of the State Treasurer.

Sec. 6. The State Treasurer shall also require the deposit as collateral security for said deposit required, United States, State, county, independent school district or municipal bonds in the sum of fifty thousand (\$50,000) dollars, but before any State, county or municipal bonds shall be received as collateral security in such cases they must be registered with the Comptroller and approved by the Attorney General of the State of Texas under the same rules and regulations as are now required for bonds in which the permanent school funds of the State are to be invested; provided, such county, municipal or independent school district bonds must be worth not less than par.

Sec. 7. The bonds above mentioned shall be delivered to the State Treasurer and receipted for by him and retained by him in the vaults of the State treasury of this State; and if in any case or at any time such bonds are not satisfactory security to the Comptroller and Attorney General and Treasurer, for the deposits made under this act, they may require such additional security to be given as will be satisfactory to them; and the Comptroller, Attorney General and Treasurer shall from time to time inspect such bonds and see that the same are actually kept in the vaults of the State treasury; and in the event that said bank or banks or banking institutions selected as State depositories shall fail to pay such deposits or any part thereof, on the check or checks of the State Treasurer, he shall have power to forthwith convert such bonds into money and disburse the same according to law upon the warrants drawn by the State Comptroller upon the funds for which said bonds are security. Any bank making deposit of bonds with the State Treasurer under the provisions of this act may cause such bonds to be endorsed, or stamped, as they may deem proper, so as to show that they are deposited as collateral, and are not transferable, except upon the conditions of this act.

Sec. 8. Any State depository receiving State funds under the provisions of this act shall pay to the State Treasurer at the end of each month interest on the average daily balance for said month at the rate of interest agreed upon, which shall in no event be less than at the rate of two per cent per annum.

Sec. 9. All tax collectors in the State of Texas and all officers charged with the duty of remitting to the State Treasurer State funds shall, after the passage of this act, instead of remitting State funds to the State Treasurer as is now required by law, cause the same to be remitted to or deposited with the nearest State depository, and shall require of said depository a triplicate receipt therefor, one of which shall be preserved by the party so depositing said State funds and the others shall be forwarded direct to the Treasurer of the State of Texas and Comptroller, respectively, whose duty it shall be also to keep with each State depository in Texas an accurate account, showing a true and correct statement of the account of said depository with the State of Texas and the balance on hand in each at the close of each day's business.

Sec. 10. If any State depository shall receive or have on hand State funds in excess of fifty thousand (\$50,000) dollars, said State depository shall remit forthwith on the first of the next month said excess to the Treasurer of the State of Texas, and in case any State depository shall fail or refuse to remit this excess it shall forfeit its right to act as a State depository and the State Treasurer shall at once close his account with said depository, notify all tax collectors and others charged with the duty of collecting public funds for the State of Texas, and the Attorney General of the State shall cause such action to be taken, if any, as may be necessary to protect the State's interest in the premises.

Sec. 11. The books and accounts of any bank or banking institution designated as a State depository pertaining to public funds shall at all times be open and subject to the inspection of the Treasurer of the State of Texas, the Attorney General or any district or county attorney of the State of Texas.

Sec. 12. Any person whose duty it is to pay over to the State of Texas any money belonging thereto or to any funds of said State may pay the same to the State Treasurer or he may remit or deposit the same in any State depository, which is then authorized to act as a State depository under this act, but in case the party is a non-resident of the State of Texas, said money so due or to become due, shall

be remitted direct to the State Treasurer at Austin. In any event said money or any money due the State, or any of its funds may be sent by registered letter in due course of mail, by postoffice money order, express money order of any company authorized to do business in Texas, or by personal check, or bank draft on any incorporated State or National bank authorized to do business in Texas; but in such cases the liability of the person sending the same shall not cease until said money is actually received by the State Treasurer or State depository, in due course of business.

Sec. 13. The Treasurer, Comptroller and Attorney General of the State of Texas shall on the taking effect of this act, have the right to make such rules and regulations governing the establishment and conduct of State depositories and State funds therein as the public interest may require, not inconsistent with this act, which said rules and regulations shall be in writing.

Sec. 14. All State funds shall be deposited in State depositories designated under this act, subject to the limitations of this act; provided, that the State Treasurer is authorized to keep and retain in the State Treasury at Austin sufficient funds to meet the current expenses of the government in case he finds it advisable so to do.

Sec. 15. If any officer charged with the duty of depositing State funds, shall refuse to so deposit the same in a depository authorized to receive the same, he shall be liable on his official bond therefor, and for interest on said amount which he has failed to so deposit at the rate of five per cent per month, at the suit of the State or county, as the case may be, and this shall be a cause for removal from office.

Sec. 16. Any banking institution designated as a State depository shall continue to act as such until March first succeeding the next general election held after its designation, and until the undertaking of its successors has been accepted by the proper authority; provided, however, that in case any such institution shall fail and refuse to qualify as such depository within thirty days next after its bid for State or county funds has been accepted, in the manner provided for in this act, or in case it shall fail and refuse to comply with any of the conditions of this act, or fail to discharge any of its duties thereunder, it shall be considered a just cause for forfeiting its rights to act as said State or county depository, and in such case the proper authorities shall be authorized to withdraw all State or county funds from such institution at any



time after five days' notice of such intention, and in such cases a new State or county depository shall be established under the same rules and regulations as herein provided for the establishment thereof in the first instance. The same rules and regulations shall apply in establishing new depositories after the tenure of depositories provided for in this act have expired; that is, the money shall again be let to the highest bidder as in the first instance, and all other regulations with reference thereto, before provided herein shall apply, but in any case arising under this act where two or more of the highest bids are the same another competitive bidding for said funds shall be ordered as in the first instance.

Sec. 17. It shall be the duty of the State Treasurer to keep and maintain as nearly as possible a fair and equal balance of moneys on hand in each State depository established by this act in proportion to the amount each is entitled to receive by drawing warrants alternately thereon or by apportioning the warrants so drawn.

Sec. 18. On demand of the State Treasurer any State depository shall issue to him or his order, free of charge, a draft or exchange on any bank in this State designated by the United States authorities as a "Reserve Bank," which draft may be in any sum stated by the State Treasurer not exceeding the amount of the State's deposit in said depository.

Section 19. If for any one or more senatorial districts no bid shall be submitted, or none shall be accepted, or the successful bidder shall fail to qualify as provided herein, it shall be the duty of the State Treasurer immediately after the date fixed herein for the opening of bids to advertise for bids in such daily newspaper or newspapers of general circulation in the State as they shall deem advisable, for proposals from any bank or banks of the class and character before mentioned in the State to keep, as a State depository, as many thirty-firsts of the State funds, not exceeding fifty thousand dollars for each thirty-first, as there are such senatorial districts for which no depository has been selected, not exceeding two thirty-firsts to be awarded to any one bidder; such bids to be submitted upon a date named in such notice, not less than twenty nor more than thirty days subsequent to the first publication of said notice last above named. Upon the date named in such notice the State Treasurer shall open all bids so received in the presence of the Comptroller and Attorney General, and shall with their approval and consent, award the keeping of the number of thirty-firsts of the State funds for

which proposals have been advertised for, to the highest and best bidders therefor. At the discretion of the State Treasurer, Comptroller and Attorney General, one bidder, making a proposal under the provisions of this section, may be awarded the keeping of two thirty-firsts or not exceeding one hundred thousand dollars of the State funds, and in such case such bidder shall deposit securities of double the value, of the same class and character, and give double the indemnity bond required by this act for depositories selected from senatorial districts and shall be governed by all the restrictions and regulations imposed upon them by this act, provided that such depositories giving such securities shall remit to the State Treasurer on the first of each month all funds in excess of one hundred thousand dollars, and shall be permitted to keep on deposit at all times two thirty-firsts of all the State funds not exceeding one hundred thousand dollars. All depositories selected under this section shall be required to file with their bids the same certified check to be forfeited under the same conditions, and their tenure shall terminate at the same time as depositories selected from senatorial districts.

No award shall in any case be made to any bidder under this section who shall propose to pay less than two per cent per annum on daily balance.

#### County Depositories.

Sec. 20. The commissioners court of each county in this State are authorized at the first term thereof after this act takes effect and at the February term thereof in 1907, and every two years thereafter, to receive proposals from any banking incorporation, association or individual banker in such county as may be desired to be selected as the depository of the funds of such county. Notice that such bids will be received shall be published by and over the name of the county judge once each week for at least twenty days before the commencement of such term, in some newspaper published in said county, and if no newspaper be published therein, then in any newspaper published in the nearest county, and in addition thereto notice shall be published by posting same at the court house door of said county.

Sec. 21. Any banking corporation, association or individual banker in such county desiring to bid, shall deliver to the county judge on or before the first day of the term of the commissioners court at which the selection of a depository is to be made, a sealed proposal, stating the rate of interest that said banking corporation, association

or individual banker offers to pay on the funds of the county for the term between the date of such bid and the next regular time for the selection of a depository. Said bid shall be accompanied by a certified check for not less than one-half of one per cent of the county revenue of the preceding year as a guarantee of good faith on the part of the bidder, and that if his bid should be accepted he will enter into the bond hereafter provided and upon the failure of the banking corporation, association or individual banker that may be selected as such depository to give the bond required by law the amount of such certified check shall go to the county as liquidated damages, and the county judge shall readvertise for bids.

Sec. 22. It shall be the duty of the commissioners court at 10 o'clock a. m. on the first day of the first term thereof after this act taken effect and of the February term, 1907, and every two years thereafter, to publicly open said bids and cause each bid to be entered upon the minutes of the court and to select as the depository of all the funds of the county the banking corporation, association or individual banker offering to pay the largest rate of interest per annum for said fund; provided, the commissioners court may reject any and all bids. The interest upon such county funds shall be computed upon the daily balances of the credit of such county with such depository and shall be payable to the county treasurer monthly and shall be placed to the credit of the jury fund, or to such fund as the commissioners court may direct. When selection of a depository has been made, the checks of bidders whose bids have been rejected shall be immediately returned. The check of the bidder whose bid is accepted shall be returned when his bond is filed and approved by the commissioners court, and not until such bond is filed and approved.

Sec. 23. Within five days after the selection of such depository, it shall be the duty of the banking corporation, association or individual banker so selected to execute a bond payable to the county judge, and his successors in office, to be approved by the commissioners court of said county and filed in the office of the county clerk of said court with not less than five solvent sureties, who shall own unincumbered real estate in this State not exempt from execution under the laws of this State, of as great value as the amount of said bond; said bond shall in no event be for less than the total amount of revenue of such county for the entire two years for which the same is made. Provided, that the commissioners court may accept in lieu of such

real estate security bonds of the United States or of the State of Texas, or of any county, city, town or independent school district in this State, which shall be deposited as the commissioners court may direct, the penalty of said bond to be not less than the total annual revenue of said county for the years for which said bond is given and conditioned for the faithful performance of all the duties and obligations devolving by law upon such depository, and for the payment upon presentation of all checks drawn upon said depository by the county treasurer of said county whenever any county funds shall be faithfully kept by said depository and accounted for according to law, and that any suits arising thereon shall be tried in the county for which such depository is selected.

Sec. 24. As soon as said bond shall be given and approved by the commissioners court, an order shall be made and entered upon the minutes of said court designating such banking corporation, association or individual banker as a depository of the funds of said county until sixty days after the time fixed for the next selection of a depository; and thereupon it shall be the duty of the county treasurer of said county, immediately upon the making of such order to transfer to said depository all the funds belonging to said county, and immediately upon the receipt of any money thereafter to deposit the same with said depository to the credit of said county; and for each and every failure to make such deposit the county treasurer shall be liable to said depository for ten per cent upon the amount not so deposited, to be recovered by civil action against such treasurer and the sureties on his official bond in any court of competent jurisdiction in the county.

Sec. 25. If for any reason there shall be submitted no proposals by any banking corporation, association or individual banker to act as county depository, or in case no bid for the entire amount of the county funds shall be made, or in case all proposals made shall be declined, then in any such case the commissioners court shall have the power and it shall be their duty to deposit the funds of the county with any one or more banking corporations, associations or individual bankers in the county or in adjoining counties, in such sums and amounts and for such periods of time as may be deemed advisable by the court, and at such rate of interest, not less than one and one-half per cent per annum, as may be agreed upon by the commissioners court and the banker or banking concern receiving the deposit, interest to be computed upon daily balances due

the county treasurer; and any banker or banking concern receiving deposits under this section shall execute a bond in the manner and form provided for depositories of all the funds of the county, with all the conditions provided for same, the penalty of said bonds to be not less than the total amount of county funds to be deposited with such banker or banking concern.

Sec. 26. When the funds of any county shall be deposited with two or more depositories, the commissioners court shall select and name by order one of said depositories to act as a clearing-house for the others at which all county warrants shall be finally paid.

Sec. 27. It shall be the duty of the depository to provide for the payment upon presentment at the county seat of the county of all checks drawn by the county treasurer upon the funds of said county, so long as funds of said county treasurer shall be in the possession of the depository subject to such checks; and for every failure to pay such check or checks at the county seat of such county upon presentment, said depository shall forfeit and pay to the holder of such check ten per cent of the amount thereof, and the commissioners court shall revoke the order creating such depository. Provided, however, the amount of its bid shall not be returned, but shall be forfeited to the county.

Sec. 28. If any depository selected by the commissioners court be not located at the county seat of such county, said depository shall file with the county treasurer of such county a statement designating the place at said county seat where and the person by whom all deposits may be received from the treasurer for such depository, and where and by whom all checks will be paid, and such depository shall cause every check to be paid upon presentation at the place so designated so long as the said depository has sufficient funds to the credit of said county applicable to its payment.

Sec. 29. It shall be the duty of the county treasurer, upon the presentation to him of any warrant drawn by the proper authority, if there shall be money enough in the depository belonging to the funds upon which said warrant is drawn and out of which the same is payable, to draw his check as county treasurer upon the county depository in favor of the legal holder of said warrant, and to take up said warrant and to charge same to the fund upon which it is drawn; but no county treasurer shall draw any check

upon the funds with said depository unless there is sufficient money belonging to the fund upon which said warrant is drawn to pay the same, and no money belonging to said county shall be paid by said depository except upon check of the county treasurer, and it shall be the duty of such depository to make a detailed statement to the county commissioners court at each regular term of said court, showing the daily balances of the preceding quarter. In case any bonds, coupons or other indebtedness of any county by the terms thereof are payable at any particular place other than the treasury of the county, nothing herein contained shall prevent the commissioners court of any such county from causing the treasurer to place a sufficient sum at the place where such debts shall be payable at the time and place of their maturity.

Sec. 30. If, for any reason, no selection of a depository be made at the time provided by law, the commissioners court may, at any subsequent time after twenty days' notice, select a depository in the manner provided for such selection at the regular time, and the depository so selected shall remain the depository until the next regular time for selecting a depository, unless the order selecting and naming such depository be revoked for lawful reasons.

Sec. 31. If the Commissioners Court shall at any time deem it necessary for the protection of the county it may require any depository to execute a new bond, and if said new bond be not filed within five days from the time of the service of a copy of said order upon said depository, the Commissioners Court may proceed to the selection of another depository in the manner provided for the selection of a depository at the regular time for such selection.

Sec. 32. The county treasurer shall not be responsible for any loss of the county funds through the failure or negligence of any depository, but nothing in this act shall release any county treasurer for any loss resulting from any official misconduct or negligence on his part, or from any responsibility for the funds of the county, until a depository shall be selected and the funds deposited therein, or for any misappropriation of such funds by him.

Sec. 33. If there be no bank situated within the county that seeks to select a county depository, then the County Commissioners Court shall advertise for bids in the adjoining counties in the manner hereinbefore provided in Section 20 of this act; provided, that when a depository has been selected by the County Commis-

sioners Court in the manner set forth in this act, said county depository shall, within five (5) days after notice of such selection had been given to said depository, file with the county treasurer of such county a statement designating the place at said county seat where the person by whom all deposits may be received from the treasurer for such depository, and where and by whom all checks will be paid.

#### City Depositories.

Section 34. The city council of every city in the State of Texas incorporated under the general laws thereof, at its first regular meeting after this act shall take effect, and at its regular meeting in July of each year thereafter, is authorized to receive sealed proposals for the custody of the city funds from any banking corporation, association or individual banker doing business within the city that may desire to be selected as the depository of the funds of the city. Notice that such bids will be received shall be published by the city secretary not less than one nor more than four weeks before such meeting, in some newspaper published in the city. Any banking corporation, association or individual banker doing business in the city desiring to bid, shall deliver to the city secretary, on or before the day of such meeting designated by said published notice, a sealed proposal stating the rate per cent upon daily balances that such banking corporation, association or individual banker offers to pay to the city for the privilege of being made the depository of the funds of the city for the year next following the date of such meeting; or in the event that said selection shall be made for a less term than one year, as hereinafter provided, then for the time between the date of said bid and the next regular time for the selection of a depository, as aforesaid. All such proposals shall be securely kept by the secretary, and shall not be opened until the meeting of the council for the purpose of passing upon same, nor shall any other proposal be received after they shall have been opened. It shall be a misdemeanor for the city secretary or other person to open any of said proposals or to disclose directly or indirectly the amount of any such bid to any person or persons before the selection of such depository, and upon conviction he shall be fined in a sum of not less than ten nor more than one hundred dollars.

Sec. 35. Upon the opening of the sealed proposals submitted, the city council shall select as the depository of the funds of the city the banking

corporation, association or individual banker offering to pay to the city the largest amount for such privileges; provided, however, the council shall have the right to reject any and all bids, and readvertise for new proposals. Within five days after the selection of such depository it shall be the duty of the banking corporation, association or individual banker so selected to execute a bond, payable to the city, to be approved by the mayor with the concurrence of the city council and filed with the city secretary, with not less than three solvent sureties, who shall own unincumbered real estate in the county in which said city is located, of as great value as the amount of said bond, or said depository may make said bond in some approved fidelity and surety company, the penalty of said bond to be at least double the total revenues of the city for the preceding fiscal year, and conditioned for the faithful performance of all duties and obligations devolving by law or ordinance upon said depository, and for the payment upon presentation of all checks drawn upon said depository by the city treasurer, whenever any funds shall be in said depository applicable to the payment of said check, and that all funds of the city shall be faithfully kept by said depository, and with the interest thereon accounted for according to law; and for a breach of said bond, the city may maintain an action in its name.

Sec. 36. As soon as said bond shall be given and approved, an order shall be made by the council designating said banking corporation, association or individual banker as the depository of the funds of the city until the time fixed by this act for another selection, and such order shall be entered upon the minutes. It shall be the duty of the city treasurer immediately upon the making of said order to transfer to said depository all the funds in his hands belonging to the city, and immediately upon the receipt of any money thereafter he shall deposit the same with said depository to the credit of the city, and for each and every failure to make such deposit, the treasurer and his bondsmen shall be liable to said depository for ten per cent per month upon the amount not so deposited, to be recovered by civil action in any court of competent jurisdiction. If any banking corporation, association or individual banker, after having been selected as such depository, shall fail to give bond within the time provided by this act, then the selection of such banking corporation, association or individual banker as the depository of the city funds shall be set aside and be null and void, and the



city council shall after notice published in the manner hereinbefore provided, proceed to receive new bids and select other depository.

Sec. 37. It shall be the duty of the city treasurer upon the presentation to him of any warrant drawn by the proper authority, if there shall be money enough in the depository belonging to the fund upon which said warrant is drawn and out of which the same is payable, to draw his check as city treasurer upon the city depository in favor of the legal holder of said warrant, and to take up said warrant and charge the same to the fund upon which it is drawn; but in no case shall the city treasurer draw any check upon any fund in the city depository unless there is sufficient money belonging to the fund upon which said warrant is drawn to pay the same. No money belonging to the city shall be paid out of the city depository except upon the checks of the city treasurer; and all such checks shall be payable by said depository at its place of business in the city. In case any bonds or coupons or other indebtedness of the city are payable, by the terms of such bonds, coupons or other indebtedness, at any particular place other than the city treasury, nothing herein contained shall prevent the city council from causing the treasurer to withdraw from the depository and to place at the place where such bonds, coupons or other indebtedness shall be payable at the time of their maturity, a sufficient sum to meet the same.

Sec. 38. If, for any reason, no selection of a depository is made at the time fixed by this act, the city council may, at any subsequent meeting, after notice published as hereinbefore provided, receive bids and select a depository in the manner herein set out, and the banking corporation, association or individual banker so selected shall remain the depository until the next regular term for the selection of a depository, unless the order selecting it be revoked for the causes specified in this act. If the city council shall at any time deem it necessary for the protection of the city, it may, by resolution, require the depository to execute a new bond, and upon failure to do so, within five days after the service of a copy of the resolution on said depository, the city council may proceed to select another depository in the manner hereinbefore provided. The city treasurer shall not be responsible for any loss of the city funds through the negligence, failure or wrongful act of such depository, but nothing in this act shall release said treasurer from responsibility for any loss resulting from any official

misconduct on his part, or from responsibility for the funds of the city at any time when, for any reason, there shall be no city depository, or until a depository shall be selected and the funds deposited therein, or for any misappropriation of such funds in any manner by him.

Sec. 29. No check shall be drawn upon the city depository by the treasurer except upon a warrant signed by the mayor and attested by the secretary. No warrant shall be drawn by the mayor and secretary upon any of the special funds of the city created for the purpose of paying the bonded indebtedness of said city in the hands of the city treasurer, or in the depository, for any purpose whatsoever other than to pay the principal or interest of said special fund, or for the purpose of investing said special fund according to law. No city treasurer shall pay off, or issue a check, to pay any money out of any special fund created for the purpose of paying any bonded indebtedness of said city other than for the purpose to pay interest due on said bonds, the principal of said bonds, or for the purpose of making an investment of said fund according to law. Any mayor who shall draw a warrant against a special fund as above defined for any other purpose than above specified, or any city treasurer who shall pay, or issue a check to pay a warrant drawn on the special fund of any city other than for the legal purpose of paying interest due on said bonds, the principal of said bonds or for investing said sinking fund according to law, shall be guilty of a felony, and upon conviction shall be confined in the penitentiary for any term not less than one year and not more than five years. The treasurer shall report to the council on or before its first regular meeting of July in each year, the amount of receipts and expenditures of the treasury, the amount of money on hand in each fund and the amount of bonds falling due for the redemption of which provision must be made; also the amount of interest to be paid during the next fiscal year, and such other reports as the existing law requires of him.

Sec. 40. All provisions of this act shall apply to towns and villages incorporated under the general laws of Texas, as well as to cities so incorporated, and the term "city council" as herein used shall be construed to include the board of aldermen of such towns and villages; the terms "city secretary" and "secretary" shall be construed to include the clerk or secretary of such towns and villages; the term "city treasurer" shall be con-



strued to include the treasurer of such towns and villages, and the term "city" shall be construed to include towns and villages.

Sec. 41. All laws and parts of laws in conflict herewith are hereby repealed.

Respectfully submitted.

LOVE of Dallas.  
LOVE of Williamson.  
WILLIAMS.  
CANALES.  
HARRIS.

On the Part of the House:

HAWKINS.  
LOONEY.  
STONE.  
FAUST.  
WILLACY.

On the Part of the Senate.

#### SENATE REFUSED TO ADJOURN.

Senator Decker moved that the Senate adjourn till tomorrow morning at 10 o'clock, which motion was lost by the following vote:

Yeas—8.

Decker.	Martin.
Grinnan.	Stafford.
Hanger.	Stokes.
Holland.	

Nays—19.

Barrett.	Hicks.
Brachfield.	Hill.
Chambers.	Looney.
Faulk.	McKamy.
Faust.	Paulus.
Glasscock.	Skinner.
Hale.	Smith.
Harbison.	Stone.
Harper.	Willacy.
Hawkins.	

Absent.

Beaty.	Meachum.
Griggs.	Terrell.

#### HOUSE BILL NO. 441—PENDING BUSINESS.

Action recurring on House bill No. 441, the question being on the motion to table the substitute amendment, which motion was adopted by the following vote:

Yeas—19.

Barrett.	Hill.
Beaty.	Holland.
Brachfield.	Looney.
Chambers.	McKamy.
Davidson.	Paulus.
Decker.	Skinner.
Faulk.	Stafford.
Faust.	Stone.
Hale.	Willacy.
Hicks.	

Nays—9.

Glasscock.	Hawkins.
Grinnan.	Martin.
Hanger.	Smith.
Harbison.	Stokes.
Harper.	

Absent.

Griggs.	Terrell.
Meachum.	

#### SENATE REFUSED TO ADJOURN.

Senator Decker moved that the Senate adjourn till tomorrow morning at 10 o'clock, which motion was lost by the following vote:

Yeas—9.

Beaty.	Hanger.
Brachfield.	Martin.
Davidson.	Stafford.
Decker.	Stokes.
Glasscock.	

Nays—19.

Barrett.	Hill.
Chambers.	Holland.
Faulk.	Looney.
Faust.	McKamy.
Grinnan.	Paulus.
Hale.	Skinner.
Harbison.	Smith.
Harper.	Stone.
Hawkins.	Willacy.
Hicks.	

Absent.

Griggs.	Terrell.
Meachum.	

#### HOUSE BILL NO. 441—PENDING BUSINESS.

Action recurring on House bill No. 441.

Senator Hill moved to reconsider the vote by which the amendment was tabled, and lay that motion on the table.

The motion to table prevailed.

Senator Hill offered the following amendment:

Amend by inserting the following and numbering it as Section 2 of the bill, and change numbers of other sections to correspond:

"Section 2. Any person desiring to purchase any portion of the unsurveyed school lands shall first make a written application to the surveyor of the proper county or district in which the land, or a portion thereof, is situated, signed and sworn to by the applicant, giving his postoffice address, and designating the land he desires, by metes and bounds, as nearly as practicable, and stating that he desires to have the land surveyed with the intention of buying it, and that he is

not acting in collusion with, or attempting to acquire said land for another person or corporation. It shall be the duty of the surveyor to file and record such application, and to survey the land and file the application and field notes in the land office within ninety days from the date of the filing of the application, together with a properly prepared and certified sketch of the survey, with the variations at which lines are run. The land shall be surveyed under the instructions of the Commissioner of the General Land Office, and where practicable, into sections of six hundred and forty acres each and of a regular form. The applicant shall pay to the surveyor one dollar as a filing fee, and his further lawful fees for surveying the land. When the surveyor returns the application and field notes to the land office, he shall report under oath the classification and market value of the land, and also the timber thereon and its value, which may be considered in connection with such other evidence as may be required in determining the class and price to be given the land or timber. Said surveyor shall also report under oath whether said land is occupied or situated in the inclosure of any person or persons, and if so the name of the occupant, owner or owners of said inclosure. If, upon inspection of the papers, the Commissioner is satisfied from the report of the surveyor and the records of the land office, that the land is vacant and belongs to the school fund, and the survey has been made according to law, he shall approve same. And if such land is occupied or situated in an inclosure he shall notify the occupant or owner thereof that the land is subject to sale by him, and if the same is not occupied or situated in an inclosure, then he shall notify the applicant having such land surveyed that the same is subject to sale, and in either case he shall state the classification, price and terms upon which the same may be purchased, which shall be the same as surveyed lands, except as herein provided; provided, that all unsurveyed vacant tracts not disclosed by the official maps in use in the land office, February 23, 1900, shall be sold for cash or for one-fortieth cash and five per cent interest on the deferred principal as the purchaser may elect, and without the condition of settlement and improvement, and with the right to pay the same out at any time and obtain patent; provided, further, that if the occupant, or the owner of such inclosure does not file his application to purchase said land within ninety days after said notice, or notify in writing the Commissioner of the General Land Office that he desires to contest the issue of such va-

56—Senate.

cancy, said Commissioner shall sell said land to any applicant having the same surveyed and field notes returned to the land office. If the occupant or the owner of such inclosure desires to contest the issue as to the vacancy, the proceedings thereunder may be as provided by Section 8 of the Act of February 23, 1900.

All unsurveyed vacant tracts which are subject to overflow, or situated in bottom or swamps, or otherwise so as to be unsuitable for settlement, may be sold for cash, or for one-fortieth cash with five per cent interest on the deferred principal, and without the condition of settlement and improvement, and with the right to pay the same out at any time and obtain patent; all unsurveyed vacant tracts not exceeding six hundred and forty acres, and not less than eighty acres, which are disclosed by the official maps in use in the land office at the time an application for a survey is filed, and which are now or may be entirely surrounded by valid surveys or sold school surveys, shall be sold as a whole, and may be sold for cash, or for one-fortieth cash with five per cent interest on deferred principal, and without the condition of settlement and improvement, and with the right to pay same out at any time and obtain patent; all unsurveyed vacant tracts less than eighty acres shall be sold as a whole, and for cash, without condition of settlement and improvement; all other unsurveyed vacant tracts disclosed by the official maps in use in the land office when an application for survey is filed shall be sold on condition of settlement and improvement as provided by law for the sale of surveyed land. In all cases of the sale of any land on deferred payments and without the conditions of settlement and improvement, as provided for in this section, the merchantable timber thereon, if any, shall first be paid for in cash. All land appropriated to the public school fund by the Act of February 23, 1900, and which has heretofore been surveyed at private expense, may be sold under the provisions of this section relating to undisclosed vacancies and swamp lands. If after the notice of approval of any survey as herein provided, the land is not sold to the occupant, owner of the inclosure or applicant having such survey made, as herein provided, such land shall be placed on the market for sale, upon the terms and conditions as other surveyed school land.

When any land, lying between older surveys, is held by the Commissioner of the General Land Office to be unsurveyed or vacant land appropriated to the public school fund by the Act of February 23, 1900, and are sold as such under the provisions of this act

or former laws, and thereafter any suit arises between the owner or owners of such older surveys, and the purchaser from the state or his vendees, any final judgment rendered in such suit shall be deemed and held conclusive as to the existence or non-existence of such vacancy. Provided, that if any such judgment is obtained through collusion or fraud against the State the same may be set aside and vacated at the suit of the State any time within five years thereafter.

Senator Faulk offered the following amendment to the amendment:

Amend the amendment by striking out all of page 1, including the word "said," on line 7, from bottom of said page, and strike out all of page 2, and insert in lieu thereof the following:

"Said surveyor shall also report under oath whether said land is occupied or claimed in good faith, or situated in the inclosure of any person or persons, and if so the name of the claimant or occupant or owner or owners of said inclosure. If, upon inspection of the papers, the Commissioner is satisfied from the report of the surveyor and the records of the Land Office, that the land is vacant and belongs to the school fund, and the survey has been according to law, he shall approve same. And if such land is claimed in good faith or is occupied or situated in an inclosure he shall notify the claimant, occupant or owner of said inclosure that the land is subject to sale by him, and if the same is not claimed, occupied or situated in an inclosure, then he shall notify the applicant having such land surveyed that the same is subject to sale, and in either case he shall state the classification, price and terms upon which the same may be purchased, which shall be the same as surveyed lands, except as herein provided; provided, that all unsurveyed vacant tracts not disclosed by the official maps in use in the Land Office, February 23, 1900, shall be sold for cash or for one-fortieth cash and five per cent interest on the deferred principal as the purchaser may elect, and without the condition of settlement and improvement, and with the right to pay the same out at any time and obtain patent; provided, further, that if the claimant, occupant or the owner of such inclosure does not file his application to purchase said land within ninety days after said notice, or notify in writing the Commissioner of the General Land Office that he desires to contest the issue of such vacancy, said Commissioner shall sell said land to any applicant having the same surveyed and field notes returned to the Land Office. If the claimant, occupant or the owner of such inclosure desires to contest the issue as to the vacancy, the proceedings

thereunder may be as provided by Section 8 of the Act of February 23, 1900.

"All unsurveyed vacant tracts which are situated in bottoms or swamps so as to be unsuitable for settlement, may be sold for cash, or for one-fortieth cash with five per cent interest on the deferred principal, and without the condition of settlement or improvement, and with the right to pay the same out at any time and obtain patent; all unsurveyed vacant tracts not exceeding six hundred and forty acres and not less than eighty acres, which are disclosed by the official maps in use in the Land Office at the time an application for a survey is filed, and which are now or may be entirely surrounded by valid surveys or sold school surveys, shall be sold as a whole, and may be sold for cash, or for one-fortieth cash with five per cent interest thereon."

Senator Hawkins raised the point of order that the amendment to the amendment to the amendment was not germane, and stated argument in support of the point.

The Chair overruled the point of order, and

Senator Glasscock also raised a further point of order that the same subject matter had already been voted down and could not be further acted on.

The Chair overruled the point of order.

#### FREE CONFERENCE COMMITTEE REPORT—ADOPTION OF.

Austin, Texas, April 10, 1905.

Hon. Geo. D. Neal, President of the Senate.

Sir: Your Free Conference Committee to which was referred

Senate bill No. 17, a bill to be entitled "An Act to inhibit owners, managers and lessees of billiard halls, pool halls and ten pin and bowling alleys and their clerks and employes from permitting persons under twenty-one years of age to play at any game of billiards or pool or to roll on a ten pin or bowling alley or permit them to enter and remain in such places of business, whether intoxicating liquors are sold therein, and to provide a penalty for the violation of this act."

Have had the same under consideration, and recommend the following amendment:

That Section 1 shall read as follows:

Section 1. That if any owner, lessee or manager of any billiard hall, pool hall, ten pin alley or bowling alley, or any employe therein, whether intoxicating liquors are sold in such place or not, shall permit any person under the age of twenty-one years to enter such place of business and remain therein for any length of time, without

the consent of the parent of such minor, or some one standing in their place and stead, or shall permit any person under twenty-one years of age to play billiards or pool, or roll on any ten pin or bowling alley in such place of business, without the consent of the parent of such minor, or some one standing in their place and stead, shall be guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than twenty-five dollars nor more than one hundred dollars.

HARPER,  
HICKS,  
SKINNER,  
MEACHUM,  
DECKER,

On the part of the Senate.

KENNEDY,  
O'NEAL,  
BARTHOLOMEW,  
BRYAN of Harris,  
ONION,

On the Part of the House.

The report was adopted.

#### ASSIGNMENT OF CLERKS TO THE ENROLLING DEPARTMENT.

The Chair here announced the assignment of the following clerks to the enrolling department: V. V. Daniels, Miss Mary McNair, Tom Cobbs, Jr., Harry Johnston, W. A. Shaw, Jr., Mrs. Grinnan.

#### SENATE BILLS SIGNED BY THE CHAIR.

The Chair (President Pro Tem. Hanger) gave notice of signing, and did sign, in the presence of the Senate, after their captions had been read:

Senate bill No. 126, a bill to be entitled "An Act to reorganize the Thirty-second Judicial District of Texas, and to fix the time for holding courts, and the terms of the courts therein, to conform all writs and processes to such changes, to declare an emergency, and to repeal all laws and parts of laws in conflict herewith."

Senate bill No. 13, a bill to be entitled "An Act to amend Article 361 of the Revised Statutes of the State of Texas, as adopted in 1895."

#### HOUSE BILLS SIGNED BY THE CHAIR.

The Chair (President Pro Tem. Hanger) gave notice of signing and did sign, in the presence of the Senate, after their captions had been read,

House bill No. 393, a bill to be entitled "An Act to amend Section 4, of Chapter 86, of the General Laws passed by the Twenty-eighth Legislature at its regular session, entitled 'An

Act to protect stock raisers and farmers, and providing for the destruction of wolves and other wild animals, to require the Commissioners Courts of the several counties of the State not herein specially exempted to pay for the killing of such wolves and other wild animals, and to repeal all laws in conflict herewith.'"

House bill No. 52, a bill to be entitled "An Act imposing a tax upon railroad corporations, the receivers thereof, and other persons, firms and associations of persons owning, operating, managing or controlling any line of railroad in this State for the transportation of passengers, freight and baggage, or either, equal to one and one-half per cent of their gross receipts; and providing for the collection and payment thereof; and repealing the existing tax on gross passenger earnings of railroads."

House bill No. 253, a bill to be entitled "An Act to amend Section 6 of Chapter 102 of the acts of the regular session of the Twenty-sixth Legislature, entitled 'An Act to promote agriculture and stock raising, and to prohibit the hunting with firearms or dogs upon the enclosed or posted lands of another in all counties within this State not specially named as exempt from the provisions of this act,' as amended by the Twenty-eighth Legislature, and to provide a penalty therefor."

House bill No. 634, a bill to be entitled "An Act to amend Section 2 of Article 9, and Section 17 of Article 9, of an act entitled 'An Act to grant a new charter to the city of Houston, Harris county, Texas, repealing all laws or parts of laws in conflict herewith, and declaring an emergency,' approved March 18, 1905."

House bill No. 22, a bill to be entitled "An Act for the taxation of the intangible assets of certain corporations, and to provide for the creation of a State tax board for the valuation of such intangible assets, and for the distribution of said values for local taxation, and for assessment of said assets and the levy and collection of taxes thereon."

House concurrent resolution No. 25, relating to the appointing a committee to investigate the management of the Confederate Home, and providing for the appointment of a committee from the Senate and House to investigate and report the same to the Legislature.

House bill No. 597, a bill to be entitled "An Act to define the method of computing the annual franchise tax payable by private, domestic and foreign corporations; to repeal all laws and parts of laws in conflict with the provisions of this act, and declaring an emergency."



## BILLS READ AND REFERRED.

The Chair (President Pro Tem. Hanger) had read and referred, after their captions had been read, the following bills:

House bill No. 558, to Committee on Stock and Stock Raising.

House bill No. 631, to Committee on Educational Affairs.

House bill No. 625, to Committee on Roads, Bridges and Ferries.

House bill No. 612, to Committee on Roads, Bridges and Ferries.

House bill No. 49, to Judiciary Committee No. 1.

House bill No. 532, to Committee on Internal Improvements.

See House messages for captions.

## ADJOURNMENT.

Senator Chambers moved that the Senate recess until 8 o'clock tonight, and

Senator Glasscock moved that the Senate adjourn until tomorrow morning at 10 o'clock, which motion was adopted by the following vote:

Yeas—16.

Barrett.	Hale.
Beaty.	Hanger.
Davidson.	Harbison.
Decker.	Martin.
Faust.	McKamy.
Glasscock.	Meachum.
Griggs.	Stokes.
Grinnan.	Willacy.

Nays—11.

Chambers.	Looney.
Faulk.	Paulus.
Harper.	Skinner.
Hawkins.	Smith.
Hicks.	Stone.
Hill.	

Absent.

Brachfield.	Stafford.
Holland.	Terrell.

## APPENDIX.

## COMMITTEE REPORTS.

## ENGROSSING DEPARTMENT.

Committee Room,

Austin, Texas, April 8, 1905.

Hon. Geo. D. Neal, President of the Senate.

Sir: Your Committee on Engrossed Bills have carefully examined and compared

Senate bill No. 320, being "An Act to authorize and permit the territory situated within the bounds of the town of Floydada, in the county of Floyd

and State of Texas, and other land and territory adjacent thereto, to incorporate as an independent school district for free school purposes only, to be known as the Floydada independent school district, with all powers, rights and duties of independent school districts formed by incorporation of towns and villages for free school purposes only,"

And find the same correctly engrossed.

BARRETT, Chairman.

Committee Room,

Austin, Texas, April 10, 1905.

Hon. Geo. D. Neal, President of the Senate.

Sir: Your Committee on Engrossed Bills have carefully examined and compared

Senate bill No. 314, being "An Act to incorporate Itasca school district No. 72, in Hill county, as an independent school district, and to provide for the election of trustees, raising revenue by taxation, issuing bonds and maintaining public free schools therein,"

And find the same correctly engrossed.

BARRETT, Chairman.

Committee Room,

Austin, Texas, April 8, 1905.

Hon. Geo. D. Neal, President of the Senate.

Sir: Your Committee on Engrossed Bills have carefully examined and compared

Senate bill No. 318, being "An Act to reorganize the Fifth Judicial District and the Seventh Judicial District of Texas, and prescribing the time of holding court in the counties composing said districts, and validating process, and providing for an emergency,"

And find the same correctly engrossed.

BARRETT, Chairman.

Committee Room,

Austin, Texas, April 8, 1905.

Hon. George D. Neal, President of the Senate.

Sir: Your Committee on Engrossed Bills have carefully examined and compared

Senate bill No. 284, being "An Act to restore to and confer upon the County Court of Newton county the civil and criminal jurisdiction belonging to such courts under the Constitution and general statutes of the State; to conform the jurisdiction of the district court of said county to such change, and to repeal all laws in conflict with this act, so far as relates to Newton county,"

And find the same correctly engrossed.

BARRETT, Chairman.



## INTERNAL IMPROVEMENTS.

Committee Room,  
Austin, Texas, April 8, 1905.  
Hon. George D. Neal, President of the Senate.

Sir: Your Committee on Internal Improvements, to whom was referred House bill No. 533, a bill to be entitled "An Act to provide a method for the assessment of taxes on real properties omitted from the tax rolls for any year or years since the year 1884, and a method for re-assessing and collecting the tax on real properties on which former assessments are found to be invalid."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass.

M'KAMY, Chairman.

Committee Room,  
Austin, Texas, April 10, 1905.  
Hon. George D. Neal, President of the Senate.

Sir: Your Committee on Internal Improvements to whom was referred House bill No. 180, a bill to be entitled "An Act to repeal that part of Article 5049, Revised Civil Statutes of the State of Texas, as amended by Chapter 18, Acts of the first called session of the Twenty-fifth Legislature, that levies an occupation tax on every person, firm or association of persons engaged in buying or selling State, county or city warrants, or other claims against the State,"

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

M'KAMY, Chairman.

## JUDICIARY NO. 1.

Floor Report.  
Austin, Texas, April 8, 1905.  
Hon. George D. Neal, President of the Senate.

Sir: Your Committee on Judiciary No. 1, to whom was referred House bill No. 340, a bill to be entitled "An Act to amend Article 644 of the Revised Civil Statutes of Texas of 1895, relating to corporations,"

Have had the same under consideration, and we report it back to the Senate with the recommendation that it do pass, but be not printed.

HICKS, Chairman.

Floor Report.  
Austin, Texas, April 9, 1905.  
Hon. George D. Neal, President of the Senate.

Sir: Your Judiciary Committee No. 1, to whom was referred House bill No. 49, a bill to be entitled "An Act to provide for the appointment of a competent stenographer to report cases, and to make the

report of such stenographer, when filed and approved, the statement of facts of the oral evidence in the case, and to provide for the compensation of such stenographer,"

Have had the same under consideration, and we report it back to the Senate with the recommendation that it do pass.

HICKS, Chairman.

Committee Room,  
Austin, Texas, April 10, 1905.  
Hon. George D. Neal, President of the Senate.

Sir: Your Judiciary Committee No. 1, to whom was referred

House bill No. 133, a bill to be entitled "An Act to fix the time within which the power of sale conferred in mortgages and deeds of trust may be exercised, and after which vendors' liens shall be presumed to be released and satisfied; and to repeal all laws and parts of laws in conflict,"

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass.

HICKS, Chairman.

## JUDICIAL DISTRICTS.

Committee Room,  
Austin, Texas, April 10, 1905.  
Hon. Geo. D. Neal, President of the Senate.

Sir: Your Committee on Judicial Districts, to whom was referred

House bill No. 633, a bill to be entitled "An Act to reorganize the Twenty-eighth Judicial District of the State of Texas, to fix the times for holding the terms of court therein, and to repeal all laws and parts of laws in conflict herewith,"

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, but be not printed.

HALE, Chairman.

## JUDICIARY NO. 2.

Committee Room,  
Austin, Texas, April 8, 1905.  
Hon. Geo. D. Neal, President of the Senate.

Sir: Your Judiciary Committee No. 2, to whom was referred

House bill No. 599, a bill to be entitled "An Act to protect fresh water fish and squirrels from being killed or caught to be sold in this State or out of this State, and declaring an emergency,"

Have had the same under considera-

tion, and I am instructed to report it back to the Senate with the recommendation that it do pass.

DAVIDSON, Chairman.

#### EDUCATIONAL AFFAIRS.

Committee Room,

Austin Texas, April 10, 1905.

Hon. Geo. D. Neal, President of the Senate.

Sir: Your Committee on Educational Affairs, to whom was referred

House bill No. 592, a bill to be entitled "An Act to create the Midlothian independent school district in the city of Midlothian, Ellis county, Texas,"

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and that it be not printed.

GRINNAN, Chairman.

Committee Room,

Austin, Texas, April 10, 1905.

Hon. Geo. D. Neal, President of the Senate.

Sir: Your Committee on Educational Affairs, to whom was referred

House bill No. 631, a bill to be entitled "An Act creating the Gause independent school district, in Milam county, and defining its boundaries,"

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be not printed.

GRINNAN, Chairman.

#### ROADS, BRIDGES AND FERRIES.

Committee Room,

Austin, Texas, April 10, 1905.

Hon. Geo. D. Neal, President of the Senate.

Sir: Your Committee on Roads, Bridges and Ferries, to whom was referred

House bill No. 625, a bill to be entitled "An Act to create a more efficient road system for San Saba county, Texas, and making the commissioners of said county ex-officio road commissioners in their respective precincts, and prescribing their duties as such, and providing for the compensation of road commissioners," etc.,

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and that it be not printed.

MARTIN, Chairman.

Committee Room,

Austin, Texas, April 10, 1905.

Hon. Geo. D. Neal, President of the Senate.

Sir: Your Committee on Roads, Bridges and Ferries, to whom was referred

House bill No. 632, a bill to be entitled "An Act to create a more efficient road law for Tyler county, Texas," etc.,

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and that it be not printed.

MARTIN, Chairman.

#### SIXTIETH DAY.

Senate Chamber,

Austin, Texas,

Tuesday, April 11, 1905.

Senate met pursuant to adjournment, Lieutenant Governor George D. Neal in the chair.

Roll called, quorum present, the following Senators answering to their names:

Barrett.	Hawk's.
Beaty.	Hicks.
Brachfield.	Hill.
Chambers.	Holland.
Davidson.	Looney.
Decker.	Martin.
Faulk.	McKamy.
Faust.	Meachum.
Glasscock.	Paulus.
Griggs.	Skinner.
Grinnan.	Smith.
Hale.	Stafford.
Hanger.	Stokes.
Harbison.	Stone.
Harper.	Willacy.

Absent.

Terrell.

Prayer by the Chaplain, Rev. H. M. Sears.

Pending the reading of the Journal of Friday, on motion of Senator Stone, the same was dispensed with.

#### PETITIONS AND MEMORIALS.

By Senator Stokes:

Crockett, Texas, April 9, 1905.

To the Legislature of the State of Texas:

We, the undersigned citizens and members of the grand jury of Houston county, Third Judicial District, Hon. B. H. Gardner sitting, beg leave to represent to your honorable body thus: